



SERIES : II

# MORAL AND PASTORAL THEOLOGY

BY

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## VOLUME FOUR

EXTREME UNCTION, HOLY ORDERS, MARRIAGE,  
THE CLERICAL STATE, THE RELIGIOUS  
STATE, DUTIES OF LAYPEOPLE

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CONTENTS

TREATISE XVI

EXTREME UNCTION

		<i>Page</i>
Chapter	I. The Sacrament and its Effects . . . . .	1
Chapter	II. Matter and Form of Extreme Unction . . . . .	3
Section i.	The Matter — — — — —	3
Section 2.	The Form — — — — —	4
Chapter	III. The Minister of Extreme Unction . . . . .	5
Section I.	Valid and Lawful Administration . . . . .	5
Section 2.	Obligation to administer Extreme Unction . . . . .	5
Chapter	IV. The Subject of Extreme Unction . . . . .	?
Section i.	Conditions for Reception — — — — —	7
Section 2.	Repetition of Extreme Unction . . . . .	8
Section 3.	Conditional Administration — — — — —	8
Section 4.	Necessity of Extreme Unction — — — — —	10
Chapter	V. Rites and Ceremonies of Extreme Unction . . . . .	ii

TREATISE XVII

HOLY ORDERS

Chapter	I. Orders in General . . . . .	*3
Section 1.	The Different Orders . . . . .	!3
Section 2.	Matter and Form of Holy Orders . . . . .	«4
Chapter	II. The Minister of Holy Orders . . . . .	21
Section 1.	The Ordinary Minister . . . . .	21
Section 2.	The Proper Bishop of Ordination for the Secular Clergy . . . . .	21
Section 3.	The Ordination of Religious . . . . .	23
Chapter	III. The Subject of Holy Orders . . . . .	25
Section 1.	Valid and Lawful Ordination . . . . .	25
Section 2.	Canonical Prescriptions affecting Candidates for Orders — — — — —	28
Chapter	IV. Irregularities and Impediments . . . . .	34
Section 1.	Nature of Irregularity . . . . .	34
Section 2.	Irregularity due to Defect . . . . .	34
Section 3.	Irregularity due to Delinquency . . . . .	36
Section 4.	Impediments to the Reception of Orders . . . . .	39



CONTENTS

		<i>Page</i>
Notes on Irregularity		40
Section 5.	Dispensation from Irregularities and Im-	
	Preliminaries to Ordination	43
Section 1.	The Due Preparation for Ordination	43
Section 2.	The Publication of Notice of Ordination	
Section 3.	Spiritual Exercises — — — — —	45
Note on the Examination of Candidates for Ordination		46
	Actual Ordination — — — — —	47
Section 1.	The Rites and Ceremonies of Ordination .	47
Section 2.	The Time and Place of Ordination .	47
Section 3.	Notification and Record of Ordination	48
Appendix.	Summary of an Instruction of the Sacred Congregation of Religious .	50

TREATISE XVIII

MARRIAGE

	Marriage in General . . . . .	53
Section 1.	The Nature of Marriage . . . . .	53
Section 2.	The Matrimonial Contract	54
Section 3.	The Married State . . . . .	
CHAPTER II.	The Kinds of Marriage . . . . .	
chapter in.	The Essential Properties of Marriage	62
Section 1.	The Unity of Marriage . . . . .	62
Section 2.	The Indissolubility of Marriage.	
	The Contract of Christian Marriage a Sacrament . . . . .	65
	Marriage a Contract . . . . .	65
Section 2.	Christian Marriage a Sacrament	
	1. A True Sacrament . . . . .	
	2. Matter and Form . . . . .	66
	3. Minister.....	66
Section 3.	The Favour of Law — — — — —	
	The Purposes and Benefits of Marriage .	68
Section	The Purposes of Marriage	68
	Marriage and its Specific and Substantial	
		69
	1. Offspring .	70
	2. Conjugal Fidelity	
	3. The Sacrament .	72

CONTENTS

vu

Chapter	VI.	The Church's Jurisdiction over Christian Marriage — — — — —	74
	Section i.	• Immediate Jurisdiction	74
	Section 2.	Persons who exercise Jurisdiction	75
	Section 3.	Persons subject to the Matrimonial Legislation of the Church	76
Chapter	VII.	The Power of the State over the MARRIAGES OF THE UNBAPTIZED .	78
Chapter	VIII.	Betrothal — — — — —	80
	Section 1.	Definitions — — — — —	80
	Section 2.	Betrothal with an Impediment .	81
	Section 3.	Age for Betrothal . . . . .	81
	Section 4.	Persons who cannot enter into Betrothal	81
	Section 5.	The Juridical Form of Betrothal	82
	Section 6.	Error in Betrothal . . . . .	83
	Section 7.	Conditional Betrothal . . . . .	83
	Section 8.	Effects of Betrothal . . . . .	84
	Note on the Obligation of Betrothal . . . . .		84
	Section 9.	The Dissolution of Betrothal	85
	Section 10.	Disclosure of Hidden Defects	86
	Pastoral Notes — — — — —		87
	Note on Preparation for Married Life . . . . .		90
Chapter	IX.	Preparation for the Celebration of Marriage — — — — —	92
	Section 1.	Freedom to Marry . . . . .	92
	Section 2.	The Preliminary Investigation by the Parish Priest.....	93
	Section 3.	The Publication of Banns	94
	Section 4.	The Obligation of revealing Impediments	96
	Section 5.	The Duty of the Parish Priest when an Impediment becomes known	97
	Section 6.	Marriage after Banns	98
	Section 7.	Instruction of the Betrothed	98
	Section 8.	The Consent of Parents .	109
	Appendix.	Investigations before Marriage	101
Chapter	X.	The Impediments TO Marriage	102
	Section 1.	General Principles .	102
	Section 2.	Doubtful Impediments	103
	Section 3.	List of Impediments	104
Chapter	XL	The Prohibitory Impediments	106
	Section 1.	The Impediment of Vow .	106
		1. The Vow of Virginity .	106
		2. The Vow of Perfect Chastity	107
		3. The Vow of Celibacy .	107
		4. The Vow of taking Sacred Orders	

Chapter XI (contd.).		Page
	5. The Vow of entering the Religious State	108
Section 2.	The Impediment of Difference of Religion	108
	1. Prohibition of Mixed Marriages	108
	2. Dispensation Reserved	109
	Reasons for Dispensation	
	Duty of the Catholic Party .	I 10
	Marriage in a non-Catholic Church	I 10
	Marriage without Dispensation	
	Convalidation of Invalid Marriage	I 12
	8. Marriage with Apostate	“ 3
	Note on the Marriage of a Notorious Sinner .	“ 3
Section 3.	The Impediment of Legal Relationship	
Appendix 1.	Pope Pius XI on Mixed Marriages	
Appendix 2.	Invalid Dispensations	116
	The Diriment Impediments	118
Section 1.	The Impediment of Age .	118
Section 2.	The Impediment of Impotency	120
	Notanda pro Pastore	120
Section 3.	The Impediment of an Existing Bond	129
Section 4.	The Impediment of Disparity of Worship	’ 32
Section 5.	The Impediment of Sacred Orders	138
Section 6.	The Impediment of Religious Profession	’ 4’
Section 7.	The Impediment of Abduction .	’ 43
Section 8.	The Impediment of Crime	’ 45
Section 9.	The Impediment of Consanguinity	’ 49
Section 10.	The Impediment of Affinity	158
Section 11.	The Impediment of Public Propriety	
Section 12.	The Impediment of Spiritual Relationship]	’ 05
Section 13.	The Impediment of Legal Adoption .	166
	Dispensation from Matrimonial Impediments	168
Section	Dispensation in General .	168
	1. Definition — — — — —	168
	2. Papal Dispensation	168
	3. Powers of Local Ordinaries to dispense	
	4. Powers of Parish Priests to dispense	
	5. Powers of Confessors to dispense .	172
	6. Powers of Assistant Priests to dispense	’ 73
Section 2.	Registration of Dispensations .	’ 74
Section 3.	Petition to the Holy See for Dispensation	’ 74
Section	Dispensation from Multiple Impediments	’ 75
Section	Dispensation when One of Several Impediments is reserved to the Holy See .	> 75
Section 6.	Causes that may be expressed in a Petition for obtaining Dispensation	’ 75
Section	The Petition itself — — — — —	177



Chapter XIII	(contd.).	
Section 8.	Errors in the Petition	179
Section 9.	The Granting of Dispensation	179
Section 10.	Offspring legitimated by Dispensation	180
Chapter XIV.	Consent in Marriage	181
Section 1.	The Qualities of Consent	181
Section 2.	The Obstacles to True Consent.	182
	1. Want of the Use of Reason	182
	2. Defective Knowledge	183
	3. Mistake — — — — —	186
	4. Pretence — — — — —	187
	5. Duress and Fear	188
	6. Intention contrary to the Essence of Marriage — — — — —	189
Section 3.	The Manner of expressing Consent	190
Section 4.	Conditional Consent	191
	1. Definition of Condition	191
	2. Principles concerning Conditions	192
	3. Consent persisting	196
Chapter XV.	The Canonical Form of Celebration OF Marriage — — — — —	197
Section 1.	Development of the Form	197
Section 2.	Valid Assistance at Marriages	198
Section 3.	The Condition for granting Faculty to assist at Marriages	200
Section 4.	The Delegated Priest	201
Section 5.	Lawful Assistance at Marriages	201
Section 6.	Marriage without an Assistant Priest	204
Section 7.	Persons subject to the Canonical Form	206
Section 8.	The Rite and Blessing	207
Section 9.	Celebration of a Mixed Marriage	208
Pastoral Note	— — — — —	209
Section 10.	The Registration of Marriage	209
Chapter XVI.	Marriage of Conscience	211
Chapter XVII.	The Time and Place of Celebration OF Marriage — — — — —	212
	Note. Assistance at Marriage	213
Chapter XVIII.	The Effects of Christian Marriage	214
Section 1.	The Effects of Marriage as a Sacrament	
Section 2.	The Effects of Marriage as a Contract	214
Appendix 1.	Legitimacy — — — — —	
Appendix 2.	Legitimation — — — — —	
Appendix 3.	Legitimation in English Law	219
Chapter XIX.	Separation of the Married	221
Section 1.	Dissolution of the Bond of Christian Marriage	221

Chapter XIX	( <i>cond.</i> ).	Paçi
Section 2.	Dissolution of Pagan Marriage .	223
	1. The Pauline Privilege	223
	2. Conditions for using the Privilege .	223
	3. Particular Papal Dispensations	226
	Note on Dissolution of the Natural Bond	227
Chapter XX.	Discontinuance of Cohabitation	228
Section 1.	Discontinuance of Cohabitation	228
Section 2.	Reasons for Permanent Separation	228
Section 3.	Some Reasons for Temporary Separation	230
Section 4.	Resumption of Conjugal Life .	230
Section 5.	Custody of the Children .	231
Pastoral Note		231
	Recttification of Invalid Marriages	232
Section i.	Convalidation in General	232
Section 2.	Simple Convalidation	232
Section 3.	Retrospective Convalidation	234
		236
Chapter XXIII.	Crvn. Marrlxge and Divorce .	237
Section 1.		237
Section 2.	Civil Divorce .	238
Section 3.	Registrar of Marriages	239
Appendix	Papal Teaching on Divorce	240
Chapter XXIV.	The Right Use of Marriage .	
Section 1.	The Teaching of Pope Pius XI	
Section 2.	General Summary of Catholic Teaching	247
	Notanda pro Confessarhs	249
Sectio i.	De Recto Usu Matrimonii	249
Sectio 2.	De Circumstantiis Actus Conjugalis .	253
Sectio 3.	De Actibus Conjugum citra Congressum	
	Maritalem — — — — —	256
	Obligatio Actus Conjugalis	257
Sectio 5.	Varia Quædam de Debito	258
Sectio 6.	De Abusu Matrimonii	260
Sectio 7.	De Cooperatione in Onanismo .	262
Note Pastorales		264
APi ix.	Monita Pp. Pii XI de Recto Usu Matrimonii	266

## TREATISE XIX

### THE CLERICAL STATE

	<i>Page</i>
Chapter      Clerics in General . . . . .	267
Chapter    II.    Vocation to the Clerical State	268
Section 1.      Necessity of Vocation	268
Section 2.      Initial and Internal Vocation .	268
Section 3.      Signs of Want of Vocation	270
Section 4.      Examination of Candidates	272
Appendix.      Pope Pius XI on the Priesthood	
Chapter    III.    The Holiness of the Clerical State	
Section 1.      Holiness to be acquired .	
Section 2.      Holiness of Life      —   —   —   —	
	The Rights and Privileges of Clerics
Chapter      The Obligation of Holiness, Obedience	
	and Studies      —   —   —   —      287
Section 1.      The Means of Holiness	287
Section 2.      Obedience      —   —   —   —   —	288
Section 3.      Clerical Studies      —   —   —   —	288
Chapter    VI.    The Obligation of Celibacy .	290
Chapter    VII.    The Obligations of Life in Common	
	Divine Office      —   —   —   —      292
Section 1.      Life in Common      —   —   —   —	292
Section 2.      Recital of Divine Office .	292
	1. The Obligation      —   —   —   —      292
	2. The Manner of Recital      293
	3. The Order of Recital .      294
	4. Omission of Divine Office      295
	5. Reasons excusing from Recital      295
	6. Prayerful Recital      296
	7. The Calendar      296
Chapter    VIII.    Clerical Dress	298
Chapter    IX    Certain Things forbidden to CLERICS	300
Section 1.      Surety and Gaming.	300
Section 2.      Lethal Weapons	300
Section 3.      Hunting	301
Section 4.      Frequenting Taverns	301
Section 5.      Medical Practice	301
Section 6.      Legal Avocations	302
Section 7.      Legislative Activity	302
Section 8.      Public Exhibitions .	302
Section 9.      Military Service	304

CONTENTS

Chapter IX	(conld.).	Page
Section 10.	<b>Trading</b> .....	304
Section n.	Investments — — — — —	306
Section 12.	Rotary Clubs.....	307
	L De a n s .....	308
	I. Parish Pr i e s t s .....	310
Section I.	Stability in the Pastoral Office .	310
Section 2.	Certain Functions reserved to Parish Priests	311
Section 3.	The Duties of Parish Priests	312
	I. Assistant Pastors or Curates .	316
Section 1.	Appointment of Curates . . . . .	316
Section 2.	Obligations of Curates . . . . .	317
Appendix	Catechetical Instruction . . . . .	320
Appendix 2.	Pope Pius XI on the Priesthood	321

TREATISE XX

THE RELIGIOUS STATE

	The Religious State in General	341
Chapter II.	Canonical Définitions	343
CHAPTER III.	The Government of Religious	344
Appendix.	Religious who are Chaplains to the Forces	345
CHAPTER IV.	Religious Vocation — — — —	346
Section i.	Special and General Vocation .	346
Section 2.	Teaching of the Fathers and Theologians	347
Section 3.	Modem Views on Vocation	349
Note on V	tion	351
	POSTULANCY .....	352
Chapter VI.	The Noviciate — — — —	353
Section 1.	The Obstacles to Admission	353
Section 2.	Some Conditions precedent to Admission	354
Section 3.	The Actual Noviciate	355
	Religious Profession	357
Section 1.	Validity of Religious Profession	357
Section 2.	Effects of the Vows — — — —	357
Section 3.	Convalidation of Vows	359
Chapter VIII.	The Obligation of the Religious Vows	360
Section 1.	General Principles — — — —	360
Section 2.	The Vow of Poverty	360
Section 3.	The Vow of Chastity	364
Section 4.	The Vow of Obedience .	365



CONTENTS		x1U <sup>999</sup>
		Pagi
Chapter IX.	Enclosure .....	307
Section i.	General Principles — — — —	3^7
Section 2.	The Law of Enclosure for Male Religious	308
Section 3.	The Law of Enclosure for Nuns	368
	The Obligation — — — —	368
	2. Nature of the Enclosure	369
	3. Exceptional Cases	3&9
	4. Permission to leave Enclosure	369
	5. Entrance within the Enclosure	370
	6. Enclosure protected	371
Chapter	The Effects of Religious Profession	373
Chapter XL	Studies in Clerical Institutes	376
Chapter XII.	The Privileges of Religious .	377
Chapter XIII.	Abandonment of Religious Life	379
Section 1.	Lawful Abandonment	379
Section 2.	Unlawful Abandonment .	380
Chapter XIV.	Dismissal from Religious Life .	382
Section 1.	Automatic Dismissal	382
Section 2.	Dismissal by Superior	382
Section 3.	Juridical Status of Dismissed Religious	385
Appendix.	Secular Institutes of Christian Perfection	386

TREATISE XXI		
THE DUTIES OF CERTAIN CLASSES OF LAYPEOPLE		
Chapter I.	General Obligations — — — —	388
Chapter II.	The Duties of Judges • .	389
	Note on the Duties of Jurymen .	392
	Papal Allocution to Catholic Jurists .	392
Chapter III.	The Duties of Plaintiffs, Defendants AND Witnesses .	394
Chapter IV.	The Duties of Advocates • .	397
Chapter V.	The Duties of Doctors and Surgeons	399
Appendix i.	A Hospital Code • .	401
Appendix 2.	Ecclesiastical Burial A .	404
	General Principles. The Cemetery	404
	Manner of Burial .	405
	Funeral Dues • .	408
	Lights in Cemeteries • .	409



Appendix a		( <i>canid.</i> ). Page
	Cremation — — — — —	409
	Pall Bearers — — — — —	410
	Burial of Unbaptized Infants . . . . .	410
	Funeral Mass . . . . .	<b>410</b>
Appendix 3.	Artificial Insemination . . . . .	<b>411</b>
	The Infertile Period . . . . .	411
Appendix 4.	Chaplains of the Forces and Missionaries of Emigrants .....	413
References to the Canons of the Codex Juris Canonici		415
Index to the Four Volumes		420

TREATISE XVI  
EXTREME UNCTION

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CHAPTER I

THE SACRAMENT AND ITS EFFECTS (c. 937)

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Extreme Uction is a Sacrament, instituted by Christ, whereby perfect spiritual health and comfort of the soul and the restoration of bodily health, if it be expedient to salvation, are granted to those in danger of death from sickness or old age, by means of the sacred anointings accompanied with the prescribed form of words. The Council of Trent enumerates the effects of this Sacrament as expiation of sin, extinction of the relics of sin, comfort and strength of the sick, confidence in the Divine Mercy whereby sickness is more easily endured and temptations resisted, and finally the receiving of bodily health if expedient to salvation.<sup>1</sup>

I .

The special grace of this Sacrament has the immediate effect of ridding the soul of the relics of sin—it is here assumed that the Sacrament is received in the state of grace—arousing and strengthening the soul of the sick, expiating for sin, disposing the subject for celestial happiness, and, mediately, restoring the sick to bodily health unless God sees this to be inexpedient for salvation. The relics of sin are the temporal punishment due to sin after forgiveness, the spiritual languor of the soul after sin, a state in which the fear of death and the Judgment, and weakness under temptations are present. The Sacrament, therefore, gives new spiritual courage to face death and overcome temptation.

B i  
\*

The Sacraments of Baptism and Penance were instituted for raising the soul from spiritual death through the remission of sin by the infusion of sanctifying grace ; this Sacrament was instituted primarily for the healing of the wounds of

»

<sup>1</sup> Cone. Trid., s. 14, ch. 2.

sin and remission of the debt due to forgiven sin. Consequently, the primary effect of this Sacrament is the spiritual strengthening of the soul, the secondary effect is the remission of sin, mortal and venial, the former, if the subject cannot confess nor elicit an act of perfect contrition, but has at least attrition, actual or at least habitual. Venial sins are remitted directly if attrition for them is present ; if it is not, they are remitted indirectly, in so far as the Sacrament gives the grace for acquiring the necessary dispositions. The last and conditional effect, is to restore health to the body. Health is restored to the body probably mediate, when God sees that restoration to health would not be to the patient's spiritual harm. If it should be spiritually harmful, God prevents the latter effect from ensuing.

The Scriptural warrant for this Sacrament is derived from S. James (5, 14 sqq.) : "Is any man sick among you? Let him bring in the priests of the Church, and let them pray over him, anointing him with oil in the name of the Lord. And the prayer of faith shall save the sick man. And the Lord shall raise him up ; and if he be in sins they shall be forgiven him." It is assumed that this text certainly applies to Extreme Unction. The reader is referred to dogmatic treatises on the subject.<sup>1</sup>

<sup>1</sup> cf. *Six Sacraments*, being Papers read at the Cambridge Summer School, 1929, edited by Rev. C. Lattey, S.J., p. 258, in a Paper by Rev. L. Geddes,

## CHAPTER II

### MATTER AND FORM OF EXTREME UNCTION

(c. 937)

#### SECTION 1. The Matter

The remote matter of this Sacrament is olive oil blessed for this purpose by a bishop, or by a priest who has the power granted by the Holy See of blessing the oil.<sup>1</sup> That the validity of the Sacrament may be quite certain, the oil must be blessed for use in Extreme Unction, but chrism and the oil of catechumens might lawfully be used in cases of urgent necessity when the oil of the sick cannot be got. The oil of the sick is to be renewed every year from the stock of oil blessed for the sick by the bishop on Holy Thursday.<sup>2</sup> The old oil may not be used for Extreme Unction unless the new oil cannot be got, and it would be a grave sin to use old oil without real necessity. The old oil is usually burned in the sanctuary lamp. If the newly-blessed oil proves insufficient in the course of the year, a little unblessed olive oil may be added, less in quantity than that which remains. The whole of the mixture is then valid and lawful matter and is blessed oil.

The Holy Oils are to be preserved in a decent place and one that is becomingly adorned, and in a vessel of silver or white metal. They should be kept in the Church under lock and key, not in the presbytery, without necessity or some reasonable cause, or without approval by the Ordinary (c. 735).

The proximate matter of this Sacrament is the anointing of certain parts of the body, and for lawful administration, the anointing of the organs of the five senses or, if these are mutilated, of the adjoining parts.

<sup>1</sup> Faculty was granted by the Holy See through the Sacred Congregation for the Eastern Church to Coptic priests of the Patriarchate of Alexandria, to bless the oil for Extreme Unction, and to use a short form for administering the Sacrament in cases of urgent danger, with unction at least on the forehead (June 26, 1933 : A.A.S., 1933, p. 332).

\* cf. Note *infra*.



## SECTION 2. The Form

The anointings are to be accompanied with the respective words or forms, and must be done in the order and manner prescribed in the ritual books. But in cases of necessity, a single anointing on one sense, preferably on the forehead (or adjacent part nearest to it if the forehead is bandaged) is sufficient, and the short form of words is then to be used. This form is : *Per istam sanctam unctionem indulgeat tibi Dominus quidquid deliquisti. Arnen.*

## Note

The Holy Oils are to be blessed by the bishop on Holy Thursday (c. 734). As regards a priest, who has not delegated power to bless them, the Holy office (May 15, 1878) would not tolerate the practice of such a priest blessing the Holy Oils. In extreme necessity, however, of a general character, it is thought, though by very few, that a priest without delegated power could bless the oil of the sick and administer Extreme Unction conditionally; cf. *Clergy Review*, May 1950, p. 338.

## CHAPTER III

### THE MINISTER OF EXTREME UNCTION (cc.938, 939)

#### SECTION 1. Valid and lawful Administration

This Sacrament is validly administered by any priest and only by one in priestly Orders. It is administered by one priest in the Latin Church, but in the Eastern Churches it has been and is still administered by several, seven, or at least three, if available. When several priests administer it, all should perform the unctions and pronounce the form of words. There is no evidence that a deacon has ever been delegated to administer this Sacrament.

Prescinding from the special cases of a bishop receiving the Sacrament, or its being administered by a religious Superior or confessor of nuns or delegated Chaplain for lay Religious (cc. 397, 514), the ordinary minister of this Sacrament is the parish priest of the place in which the sick person is residing, but in cases of necessity, such as would arise from sudden illness or distance from the church, any priest may administer this Sacrament, and, even apart from the case of necessity, he could do so with the reasonably presumed permission of the said parish priest or the local Ordinary.

#### SECTION 2. Obligation to administer Extreme Unction

The obligation of the parish priest of administering this Sacrament, personally or by proxy, to the sick is a grave obligation of justice. But he would not be obliged to administer the Sacrament at the risk of his life, if provision had been or could be made for the dying by the Sacrament of Penance. A parish priest would sin grievously if, without sufficient reason, he deferred the administration of this Sacrament when there was a probable danger of the sick dying without it. Consequently, the priest on the mission should visit the sick of his district frequently, every day if possible, in order that no one may die without the

## EXTREME UNCTION

Sacraments, and when called to the sick he should go at once, if the case is stated to be urgent, with all tilings necessary for giving the Last Sacraments. In cases of necessity, every priest is bound by charity to administer this Sacrament. The obligation would not be grave unless the sick person were in great need, as if he could not receive any other Sacrament, nor would a priest, other than the parish priest, be obliged to administer this Sacrament at the risk of his life, unless the dying person was in danger of dying in the state of mortal sin.

### Note

When Holy Viaticum, Extreme Unction and the Last Blessing are administered immediately one after another, the opening prayers and the Confiteor need be recited only once. A reply of the S.R.C. to the French Bishops (Oct. 30, 1953) and the authority of certain approved rituals are sufficient warrant for this.<sup>1</sup>

<sup>1</sup> Of. *Clergy Reziræ*, Oct. 1954, vol. xxxix, pp. 627-8.



## CHAPTER IV

### THE SUBJECT OF EXTREME UNCTION (cc. 940-944)

#### SECTION 1. Conditions for Reception

The conditions for valid reception of this Sacrament are :

1. Preceding Baptism and intention to receive the Sacrament.

2. The subject must have reached the use of reason, for such a one is capable of sin. Consequently, children who have sufficient discretion to commit sin, even venially, are capable of receiving this Sacrament, and the minister need have no misgiving in administering it to them however innocent they may appear to be.

3. The subject must be in danger of death from sickness or old age. The danger need not be obvious and certain ; it is sufficient if the danger is probable, that is, if thought to be probable. Those who are not sick (nor old enough for the danger of death to be practically present) cannot validly receive this Sacrament. Therefore it may not be administered to soldiers going into battle, condemned criminals, travellers on a dangerous journey, those about to undergo a serious operation, if the danger from sickness or disease is not actually present, nor women in child-birth merely for that reason. Persons suffering from lingering diseases, such as cancer, even though they may possibly live for several months, can validly receive this Sacrament, provided they can be said to be in probable danger of death. In many cases of lingering illness, the disease may easily and often does become suddenly rapid. It is not necessary to wait for imminent danger. Illness which, of its nature, is serious and dangerous justifies reception of this Sacrament.

Old age is itself a sickness, and the body is at that time slowly disintegrating. But old age is a relative term. For valid and lawful administration to the aged, the minister must prudently judge that there is some sign of waning vitality, though it may be very gradual, or dangerous symptoms may be apparent, such as continual attacks of fainting fits.



## UNCTION

### SECTION 2. Repetition of Extreme Unction

In one and the same sickness, Extreme Unction may not be repeated, unless the sick person, after having received this Sacrament, has recovered and has again fallen into the danger of death. The canons do not, nor could they, determine what period of temporary recovery is needed, for the time would differ in different illnesses. It is a practice of prudent parish priests to administer the Sacrament once a month to a sick person who, having at first received it in danger of death, gives no evident sign of getting much better. It is reasonably thought that such a one must have got well of the first danger, and is now in a fresh danger of death. No doctor would probably regard this contention as scientific, but in such cases we need not be guided by exact scientific principles ; we may act in accordance with broad human deductions.<sup>1</sup>

### SECTION 3. Conditional Administration

When the pastor doubts as to whether or not the sick person has reached the age of discretion, or whether the danger of death is present, or whether the person is dead, the Sacrament should be given conditionally.<sup>2</sup> The only condition that need be expressed is : *Si vivis* ; the condition : *Si capax es*, may be expressed validly. The condition : *Si dispositus(ta)es*, should not be employed, for if it were, and if the subject was not fit to receive the Sacrament, it would not have been received, and could not reassert itself.

Extreme Unction is not to be administered to those who obstinately persist in their impenitence in a manifest mortal sin, but in case of doubt it is to be administered conditionally (c. 942). The pastor can say nothing concerning the state of soul of one who is lying unconscious, and he may, therefore, always give such a one the benefit of the doubt. The internal intention on the part of the priest of doing all that he can do is sufficient conditional intention in such cases. But if the person is conscious and obstinately refuses to

<sup>1</sup> Kilker, *Extreme Unction*, cb. v, p. 198.

\* Kilker, *op. at.*, p. 215.

undertake—if he should recover—a grave obligation, or if he will not retract his wish to be cremated, or if he will not give up membership of a condemned society, he has to be treated with great prudence, and if there is no manifest scandal nor likely to be such, it is sometimes possible to assume good faith. Assuredly the wise pastor should not change good faith into bad faith, for the dying person may be the victim of invincible ignorance. The time and manner of giving admonitions in these supreme moments should be a subject of the most profound consideration. It is possible to believe that God will not let such sinners perish, and the pastor is obliged by his office and by charity to do all that he humanly can do to secure the salvation of even the most obstinate sinner.

This Sacrament is to be administered without any conditions, i.e., absolutely, to those sick who (being, of course, in danger of death from sickness or old age) though at the moment unconscious or bereft of reason asked for the Sacrament—at least implicitly—when they were conscious and rational, or probably would have asked for it. There is embodied in the canons the clearest teaching that an implicit or even an interpretative intention suffices. The implicit intention will have been manifested by an ordinarily good Catholic life, since the practice of the Faith in however remiss a degree implies by that very fact a desire to receive at the moment of death all the helps to salvation that it is possible to receive. Some authors wrongly, we believe, would refuse the Sacrament to one who had positively repudiated the ministry of a priest up to the moment of unconsciousness. Provided there is no scandal given, it appears right to administer this Sacrament, at least conditionally, to such a one, for who can judge of the state of soul of one who is lying apparently unconscious? Numerous cases are reported of persons who knew everything that was going on around them but were unable to move a finger or open their eyes. This cataleptic state is, we think, not so very uncommon just before death.

It has been discovered by doctors that after the main vital activities, in particular respiration and the circulation of the



blood, have ceased to be perceptible certain minor and more deepseated activities continue. Hence it is concluded that life itself continues for some time after its main manifestations cease, that is after apparent death; for how long depends on the cause of death. In the case of ordinary death from sickness half an hour would seem a conservative estimate. Where death supervenes suddenly, v.g. from drowning, lightning, stroke, apoplexy, or even sudden collapse during an illness, the period may be prolonged for several hours. As reception of this sacrament may be the sole means of salvation of a soul it should be administered conditionally so long as there is a possibility that life continues.<sup>1</sup>

#### SECTION 4. Necessity of Extreme Unction

This Sacrament is not, in itself, necessary for salvation, but it is not permitted to disregard it. Probably there is not a grave obligation to receive it, unless, of course, it became accidentally necessary. But it would be a grave sin to despise this Sacrament or so to disregard it as to give grave scandal. Pastors will, therefore, use the greatest diligence in seeing that the sick receive this Sacrament whilst they are in full possession of their senses. This is an obligation of justice as well as a precept of positive law. A serious sin would be committed by the pastor if he habitually neglected the sick or if, in a particular case that was known to be urgent, he refused without just reason to administer the Sacrament. There is also an obligation of charity, which may easily be a grave one, on doctors, nurses, relatives, friends, to warn the dying of the need of the Sacrament and to send word betimes to the pastor regarding the sick.

## CHAPTER V

### rites and ceremonies of extreme unction

(cc. 945-947)

The five parts to be anointed are eyes, ears, nostrils, lips, hands and feet. The right part of an organ or sense is to be anointed before the left ; the lips are anointed by a vertical unction over both lips and a horizontal unction across one lip ; the palms of the hands are anointed in the case of lay people, the outside of the hands in the case of a priest ; the insteps of the feet are to be anointed unless that unction is omitted ; the lobes of the ears are anointed. The anointing of the loins, once common, is now always to be omitted ; the anointing of the feet may be omitted for any reasonable cause. Except in cases of grave necessity the anointings are to be done by direct touch, not with an instrument such as a brush or small stick. In contagious diseases, however, a small quantity of cotton wool wrapped round a small stick may be used, but care must obviously be taken not to dip this wool into the oil stock when the patient has once been touched with it. A separate piece of wool, steeped in the Holy Oil, should serve the purpose of an oil stock. The used wool should be burnt and the ash thrown down the sacra-  
rium. A pencil or metal instrument used may be disinfected by holding it in the flame of gas, fire or candle for a few seconds.

If a single anointing is done in cases of urgent necessity, as when death appears imminent, the several anointings must be done afterwards, when the immediate danger has ceased and the person is still living and still in danger. But the obligation of supplying these anointings does not arise unless there persists the same dangerous sickness, for if the subject—which is, of course, improbable—had recovered, Extreme Unction would be invalid. The reason, therefore, of supplying the additional anointings is to render the Sacrament more integral, to give additional grace if the dispositions of the subject are better, to secure the fuller efficacy of the

Sacrament for the sins of the separate senses ; one or other of these reasons will always be verified. It appears best, therefore, to say that so long as the same sickness remains, the anointings may and should be supplied even after a considerable interval.<sup>1</sup> These additional anointings are to be given absolutely not conditionally<sup>2</sup> just as anointings are to be supplied if one or other of the senses had not been anointed through inadvertence or had been carelessly anointed.

If this Sacrament has to be given to several persons in the same hospital ward or elsewhere on one and the same occasion successively, the priest first offers the crucifix to each to be kissed, then recites in the plural number the prayers which precede the unctions, then anoints each person in the usual way and recites the rest of the prayers in the plural number.<sup>3</sup>

<sup>1</sup> Venn., III, n. 651 ; Kilter, *op. cit.* p. 393 sqq.

<sup>1</sup> S.O., March 6, 1917.

\* S.R.C., Aug. 9, 1922.



# TREATISE XVII

## HOLY ORDERS

### CHAPTER I

#### ORDERS IN GENERAL (cc. 948-950)

##### SECTION 1. The Different Orders

Orders differentiate, by the institution of Christ our Lord, clerics from lay people in the Church, and by sacred ordination the clergy are formed into a hierarchy, and to them are entrusted the government of the members of the Church and the ministry of divine worship including the power of offering sacrifice. The clergy govern the mystical body of Christ, and are endowed with jurisdiction and power over the Real Body of Christ. They alone can perform certain acts validly, for the power to do so is conferred on them alone by a special Sacrament instituted by Christ for that purpose. This Sacrament of Orders is a Sacrament by which certain spiritual powers are conferred, together with the grace worthily to perform those duties which are annexed to the several offices of Orders.

In the canons, the term major Orders denotes priesthood (including episcopacy), diaconate, subdiaconate ; the term minor Orders denotes the Orders of acolyte, exorcist, lector, doorkeeper. The terms ordain, Order, ordination, sacred ordination, always refer to episcopal consecration, or to the Orders enumerated above, as well as to tonsure, unless the contrary is evident.

This Sacrament bestows an indelible spiritual character, so that it cannot be lost nor the Sacrament received a second time.

In the Latin Church there are only three major or sacred Orders, namely, the subdiaconate, the diaconate, the priesthood. The priesthood is imperfect in the simple priest and is perfect in the bishop, for episcopacy includes the sum total of priestly powers.

There are four minor Orders, namely, those of acolyte, exorcist, lector, doorkeeper.

Episcopacy, priesthood and diaconate are Sacraments and of divine institution? Whether or not the other Orders are Sacraments is a disputed point ; it appears more probable that they are not. The subdiaconate became classed as a major Order about the twelfth century when the obligation of celibacy was annexed to it and when a subdeacon was eligible for the episcopacy.

The first tonsure constitutes a person a cleric. It is ecclesiastical in origin and not a Sacrament. The essential rite consists in the cutting off a portion of the natural hair of the subject by a bishop or legitimate prelate, and the pronouncing by the subject of a certain form of words, viz., *Dominus pars hereditatis mee et calicis mei ; tu es qui restitues hereditatem meam mihi.* The surplice is placed on the subject, but this is not an essential part of the rite.

## SECTION 2. Matter and Form of Holy Orders<sup>8</sup>

I. The matter of the minor Orders and of the subdiaconate consists in handing to the subject the symbols of office and the form consists of certain words when these symbols are given.

(a) The doorkeeper receives keys (one key being sufficient for validity) ; the lector receives a book of Lessons, namely, the Missal, the Breviary, or a volume of Sacred Scripture ; the exorcist receives a book in which the Exorcisms are set forth, but a Pontifical or a Missal suffices ; the acolyte receives a candlestick with candle, and empty cruets (at least one cruet). The usual manner of receiving the cruets is to touch them with the first two fingers of the right hand.

(b) The subdeacon receives an empty chalice with paten placed upon it ; if the chalice contain wine or water and if there is a host on the paten, the validity is not affected ; nor is it affected if the chalice and paten are not consecrated. The usual way of receiving chalice and paten is to place the first two fingers of the right hand on the paten and the

<sup>1</sup> Cone. Trid., s. 23, cc. 3, 6.

<sup>8</sup> For the diaconate, priesthood, episcopate, cf. Apostolic Constitutions of Pope Pius XII, Nov. 30, 1947, Nov. 30, 1944.



thumb on the cup of the chalice simultaneously. It is sufficient to touch the paten alone. The archdeacon presents to each the cruets filled as for Mass, one with wine, the other with water; the cruets, dish and towel are to be touched by each ordinand. A book of the Epistles or a Missal is also handed to the subdeacon; this latter is thought by some authors to be essential. The contact must be immediate and physical. The form of the subdiaconate consists of the words used by the ordaining bishop whilst handing the chalice, paten and book. The subdeacon is vested in amice, alb, girdle, maniple and dalmatic.

2. The matter of ordination to the diaconate is the imposition of hands by the ordaining bishop.

The form is expressed in the words of the Preface, the essential words being; *Emitte in eum, quaesumus, Domine, Spiritum Sanctum, quo in opus ministerii tui fideliter exsequendi septiformis gratiae tuae munere roboretur.*

3. The matter of the ordination to the priesthood is the first imposition of hands by the ordaining bishop done in silence, not the continued extension of the bishop's right hand, nor the last imposition of hands.

The form is expressed in the words of the Preface, the essential words being: *Da, quaesumus, omnipotens Pater, in hunc famulum tuum Presbyterii dignitatem; innova in visceribus ejus spiritum sanctitatis, ut acceptum a Te, Deus, secundi meriti munus obtineat censuramque morum exemplo suae conversationis insinuet.*

4. The matter of the consecration of a bishop is the imposition of hands by the consecrating bishop.

The form is expressed in the words of the Preface, the essential words being: *Comple in Sacerdote tuo ministerii tui summam, et ornamentis totius glorificationis instructum coelestis unguenti rore sanctifica.*

In the consecration of a bishop, each of the two co-consecrator bishops must employ the matter and form with the intention of conferring episcopal consecration in the same way as the chief consecrating bishop. The other ceremonies are required for liceity not for validity.

In all cases, the imposition of hands must be a physical contact, but moral contact (i.e. extension of hands) is



sufficient for validity. These regulations of the Apostolic Constitutions have no retroactive force.<sup>1</sup>

5. Some replies of the Sacred Congregations here follow, but they apply to ordinations which took place before the aforesaid Constitutions came into force. They are, therefore, in regard to future ordinations, to be modified in the light of the new Apostolic Constitutions.

6. The following points are noteworthy in regard to the subdiaconate :

The chalice which is used in ordination to the subdiaconate should be consecrated, but defect of consecration does not invalidate the ordination.

If the chalice contained wine, or the paten had a host on it, the ordination is not affected. If the bishop did not himself hand the chalice and paten to the candidate, the ordination is to be repeated.

It is sufficient for valid ordination, if the candidate touches the chalice alone or the paten alone.

The handing of the book of the Epistles or a Missal is not essential. If this part of the rite was omitted, or done by some one other than the bishop, this part must be repeated and it may be repeated privately outside Mass.

Accidental rites, as the handing of the cruets, dish and towel and imposition of amice, maniple and dalmatic, if omitted, are not supplied.

7. The following points are noteworthy in regard to the diaconate :

If the ordaining bishop has not physically touched the head of the candidate, the whole ordination must be repeated conditionally.

The ordination is valid if the ordaining bishop omitted the extension of the right hand towards the candidates during the prayer : “ *Emitte in eos*, etc.”

The handing of the book of the Gospels or Missal, if omitted, or if not done by the bishop himself, must be supplied.

The vesting with stole and dalmatic, if omitted, need not be supplied.

<sup>1</sup> The Apostolic Constitutions referred to are those of Nov. 30, 1944, and Nov. 30, 1947. The latter took effect as from midnight 27-28 April, 1948.

8. The following points are noteworthy in regard to the priesthood :

There are three impositions of the hands in ordination to the priesthood. The first takes place when the ordaining bishop places both hands on the head of each candidate without any form of words ; after this, the priests who are present do the same. The second takes place when the bishop, with mitre on his head, stands facing the candidates, and says the words : “ *Oremus, fratres carissimi, etc.*” This is called the second imposition of hands, though it is really an extension of the right hand towards all the candidates. The third takes place after the Communion of the Mass, when the bishop, seated on the faldstool, places both hands on the head of each of the ordained, kneeling before him, and says the words : “ *Accipe Spiritum Sanctum, etc.*”

(a) The first imposition of hands.

The bishop must touch the head of the candidate physically, otherwise the whole ordination must be repeated conditionally. Ordination is not affected if the candidate's head is covered.

If both the first and the second impositions of the bishop's hands were omitted, but supplied before the *traditio instrumentorum*, the ordination is valid. But if the double imposition of hands, if omitted, was supplied after the *traditio instrumentorum*, v.g., after the Communion, without repeating the *traditio instrumentorum*, the ordination must be repeated conditionally.

The imposition of hands by the priests who are present at the ordination, if omitted, need not be supplied.

(b) The second imposition of hands, that is, the extension of his right hand by the bishop towards the candidates.

This imposition of the right hand by the bishop and the priests (either some or all) present, until the bishop has finished the prayer *Oremus, fratres dilectissimi* is prescribed.

The ordination is valid if the bishop holds his right hand extended only during the interval after the first imposition of hands until the beginning of the prayer *Oremus, fratres carissimi*, or if only immediately before the said prayer, or only during the said prayer, or towards the end of it, or after it for some time.

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If this extension of the right hand was omitted, the ordination must be repeated conditionally.

If this extension of the right hand had been omitted, but was supplied before the *traditio instrumentorum*, and if the prayer *Oremus, fratres carissimi* was repeated in a low voice, the ordination is valid.

A candidate need have no anxiety about his ordination, if he was in doubt as to his too great distance from the other candidates during this second imposition of hands.

(c) The third imposition of hands.

If this imposition had been omitted or incorrectly done, it is sufficient that it should be repeated by itself. If the bishop made a mistake in the form by which the power of forgiving and retaining sins is bestowed, both the imposition and the form must be supplied conditionally by themselves.

If physical contact did not take place, it is to be supplied together with the form.

(d) The anointing of the hands.

The anointing is done inside the hands, in the form of a cross from the right thumb to the left index finger and from the left thumb to the right index finger and then on the palms. If omitted, it is to be supplied. If the anointing was done with chrism or oil of the sick, instead of with the oil of catechumens, nothing is to be repeated. If the bishop pronounced only part of the form for each candidate except the last one, but during the anointing of the last candidate pronounced the whole form, wishing thereby to extend the form to all the candidates, nothing need be repeated. A priest soldier who has lost his first finger need not have his second finger anointed.

(e) The handing of chalice and paten.

That the ordination may be certainly valid—the chalice containing wine and the paten having the host resting on it—the bishop must himself present them after the two impositions of hands and in union with them, the candidates must touch the instruments, at least mediately.

(i) As to the matter being capable of consecration, the wine in the chalice and the host on the paten must be fit matter for the sacrifice; chalice and paten need not be consecrated for validity.

(ii) As to the chalice, if it contain wine without water mixed with it, the ordination is valid. But the ordination must be repeated conditionally if the chalice was empty, or contained water only, or as much water as wine, or more water than wine, even though such defects were corrected after the Communion of the Mass before the third imposition of hands. The ordination is, however, valid, if the water mixed with the wine was a little more than a fifth part, or was certainly less than the quantity of wine.

(iii) As to the paten and host, priestly ordination must be repeated conditionally, if there was no host, or if the host fell to the ground and was not replaced before the touching of the instruments and the pronouncing of the form.

(iv) As to the handing of the instruments, the bishop himself must present them ; if he did not, priestly ordination must be repeated conditionally. Furthermore, this handing of the instruments must follow the twofold imposition of hands, and have connection with it ; consequently, it would not be sufficient to correct this defect by handing the instruments after the Communion of the Mass before the third imposition of hands, without the twofold imposition of hands. Though each candidate should be presented with the instruments and the form pronounced in the singular number, “ *Accipe potestatem, etc.*”, priestly ordination would be valid, if the bishop presented the instruments to several candidates together, though pronouncing the form, “ *Accipe potestatem, etc.*” in the singular. So, too, priestly ordination is valid, if the bishop pronounced the form after a slight interruption.

(v) As to touching the chalice and paten, the following points are noteworthy.

The bishop presents the chalice, in which there is wine and water, and the paten on which a host is resting. The candidate must touch the cup of the chalice with both middle fingers and the paten with both first fingers.

The priestly ordination is valid if the candidate touched the chalice and the host but not the paten, or if he touched the paten with host but not the chalice, or if he touched the chalice only but not the paten. It is also valid, if the



candidate touched with thumbs and first fingers the cup of the chalice and then, whilst the bishop was pronouncing the form, only the paten resting on the chalice. Ordination is valid, if the candidate touched the instruments but afterwards, whilst the bishop was pronouncing the form, the candidate was prevented from continuing contact by the hands of the other candidates. All merely negative doubts as to contact of the instruments are to be put away.

(J) The imposition of the stole and chasuble, if omitted, need not be supplied.

(σ) The promise of obedience should be made, but if omitted, it need not be supplied, though it is becoming that it should be supplied. Finally, if a candidate did not recite the whole of the ordination Mass with the bishop, the defect need not be remedied.<sup>1</sup>

Anxiety arises at times in the case of a priest who fears that some probably essential part of the rite had been omitted. The only practical way of allaying such disquiet is to make inquiries of the bishop or the master of ceremonies and thus get the assurance of one or the other that everything essential was done. It is unreasonable to expect the physical certitude which the recipient's senses could supply. Though valid ordination is a matter of supreme moment, harassing unreasonable scruples after the event are to be set aside ; otherwise the whole of the priestly life becomes a protracted anguish. The same must be said concerning scruples about insufficient intention. It is admitted by every theologian that a virtual intention is sufficient for receiving Sacred Orders, and it seems impossible that at least such an intention should not be present if an ordinand vested himself and proceeded to the altar for ordination. He would not have been where he was unless his intention took him there and kept him there.<sup>2</sup>

<sup>1</sup> The author wishes to acknowledge his indebtedness to Rev. F. X. Hecht, P.S.M., for permission to reproduce this Summary from *Periodica*, 1934, where the statements are fully documented.

<sup>2</sup> The question of the validity of ordination may sometimes arise, owing to circumstances of fear, undue influence, or unwillingness to undertake the obligations of the priesthood. The Sacred Congregation of the Sacraments has issued (A.A.S., Dec., 1931) full instructions to local Ordinaries on the right method of procedure in settling such cases.

## CHAPTER II

### THE MINISTER OF HOLY ORDERS (cc. 951-967)

#### SECTION 1. The Ordinary Minister

The ordinary minister of sacred ordination is a duly consecrated bishop.<sup>1</sup> The extraordinary minister is one who, though not a bishop, has received from law or the Apostolic See by special induit the faculty of conferring some Orders. By law, Cardinals who are priests, Vicars Apostolic, Prefects Apostolic, certain abbots and prelates can confer tonsure and minor Orders under certain conditions laid down in the canons. By special induit a simple priest may bestow tonsure and minor Orders, but not, at present, the subdiaconate or diaconate.

For the lawful use of the power of ordaining, no one may, without special faculty of the Holy See, promote to a higher Order one who has been ordained by the Roman Pontiff, nor may anyone consecrate a bishop without papal mandate ; in episcopal consecration, two co-consecrating assistant bishops must be present with the consecrating bishop, unless dispensation is given by the Holy See to have two assistant priests. Furthermore, every subject of ordination is normally to be ordained by his own bishop, or, failing that, with legitimate dimissorial letters of his bishop. A bishop of the Latin rite may not lawfully ordain a subject of the Oriental rite without an Apostolic induit.

#### SECTION 2. The proper Bishop of Ordination for the Secular Clergy

I. For the secular clergy the proper bishop of ordination is the bishop of the diocese in which the subject has a domicile and was born, (birthplace here meaning the domicile of the parents), or the bishop of the diocese in which the subject has a simple domicile without reference to domicile of origin. But in this latter case the ordinand must take an oath to remain permanently in the diocese except

<sup>1</sup> In episcopal consecration the two assistant bishops are to be called co-consecrators (*Concr/. Apost.*, Nov. 30, 1944).



in these cases, viz., when the ordinand has been already incardinated in the diocese by tonsure, or when a candidate is ordained by his own bishop for another diocese, or when the ordained is a Religious. Tonsure incardicates a cleric in the diocese of the bishop who gives him tonsure, and in whose diocese he has a domicile, unless intended for another diocese.<sup>1</sup> If he receives tonsure from his own bishop for service elsewhere, his bishop of ordination is the bishop of the latter diocese,<sup>2</sup> and he alone gives dimissorial letters.

The place of origin is the natural and common domicile of parents, or the place of their habitual residence. An illegitimate or posthumous child has the domicile of its mother at its birth ; a *vagus* has the domicile of actual birthplace ; a child exposed has the domicile of the place of its finding. A subject for the foreign missions who has abandoned for good the diocese of his birthplace has no proper bishop, since he acquires only a quasi-domicile in the seminary. He requires dispensation of the Holy See.

The proper bishop of one who has no domicile in the diocese is the bishop of the place where the ordination takes place, provided the candidate previously acquire a domicile with an oath of remaining in the diocese permanently.<sup>3</sup> Residence, it seems, with the added oath, is enough.<sup>4</sup>

2. Dimissorial letters are the letters given by the proper bishop to present to another bishop with a view to ordination by the latter. In the case of seculars these letters can be given by the following, as long as they retain jurisdiction in their territories, viz., the proper bishop after legitimately taking possession of his See (c. 334, 3) even before consecration, the vicar general by special mandate from the bishop, the Vicar Capitular with the consent of the Chapter after a year's vacancy of the episcopal See. During the first year of vacancy, the Vicar Capitular can give dimissorial letters only to those styled *arctati*, that is, those in the necessity of receiving an Order because a benefice, to which they have been appointed, elected or nominated, requires it, or because the needs of the diocese require

xcf. cc. III, 969; P.C.C.J., July 24, 1939.

<sup>1</sup> P.C.C.J., Dec. 7, 1931 ; Aug. 17, 1919 ad II private ; July 24, 1939.

<sup>3</sup> P.C.C.J.. Aug. 17, 1919.

<sup>4</sup> *Irish ThioL Quarterly*, 1919, p. 391.

immediate appointment to some certain office which presupposes ordination. The letters can also be given by Vicars Apostolic, Prefects Apostolic, abbots and prelates *nullius*, though not bishops.<sup>1</sup> The Vicar Capitular is warned (c. 958, 2) not to grant dimissorial letters to those who had been rejected by the deceased bishop. It is to be observed (c. 959) that those who can grant dimissorial letters for ordination can confer these same Orders if they have the necessary power of Order themselves.

The dimissorial letters are not to be granted to a candidate until all testimonial letters required by the canons (cc. 993-1000)<sup>2</sup> have been received by the grantor, and indeed fresh letters may be necessary to supplement those already given (c. 994). If the ordinand has resided in the diocese of the ordaining bishop long enough to contract a canonical impediment, the latter has himself to obtain all necessary guarantees. These dimissorial letters may be sent by the proper bishop of the ordinand, or by any of the six suburbicarian Cardinal bishops to any bishop in communion with the Holy See, not, however, to a bishop whose rite differs from that of the ordinand, and a bishop, on receipt of such letters, may ordain a candidate not his own subject, if additional testimonials (c. 994, 3) are not required. Dimissorial letters may contain limiting clauses (as to examination, minister and time), or may be revoked, but if not revoked, they remain good even if the grantor quits office, so that if granted by the Vicar Capitular they remain effective unless the new bishop withdraws them.

### SECTION 3. The Ordination of Religious

I. An actually governing abbot of Regulars who is a priest and has received the abbatial blessing can give tonsure and minor Orders to a subject who has made at least his simple profession. Consequently, a titular abbot cannot do so. If any of the aforesaid conditions are not fulfilled, the

<sup>1</sup> Pro-vicars Apostolic may, during a vacancy, issue dimissorial letters without waiting for a full year of vacancy to elapse (P.C.C.J., July 20, 1929). Probably also pro-Prefects and the senior Missionary.

\* cf. *infra*, p. 43 sqq.



ordination would be invalid, unless conferred by one who is a bishop, even a titular, for this character supplies jurisdiction at least in law.

2.The proper person to issue dimissorial letters for exempt Religious is their higher Superior, and without these, no bishop could lawfully ordain such Religious, but for subjects who have taken simple triennial vows preparatory to perpetual vows, the letters are good only for tonsure and minor Orders. Members of Religious Institutes which are not exempt require dimissorial letters in the same way as those ordained to the secular priesthood.

3.The *Codex* warns religious Superiors, as did Pope Benedict XIV and Pope Clement VIII, that dimissorial letters are to be sent to the bishop in whose diocese is situated the religious house of which the ordinand is a member, with the exceptions presently to be stated. Superiors who presume to disobey this prescription are suspended from the celebration of Mass for a month (c. 2410). Some Religious Orders, however, as that of the Society of Jesus, have the privilege of sending their subjects for ordination to any bishop. Furthermore, the canons warn Superiors not to act fraudulently in sending a subject to be ordained to another house of the Institute, or to defer the issuing of letters until the bishop is absent or will confer no ordinations.

4.But certain exceptions to the prescription just enunciated are reasonably made by the canons. Thus, religious Superiors may send dimissorial letters to a bishop other than the diocesan bishop if the latter grants permission, or belongs to a different rite, or is absent, or does not intend to confer ordination at the next regular time (Ember Saturdays, Eve of Passion Sunday, Holy Saturday, c. 1006), or if the See is vacant and the administrator has not episcopal power. In all such cases, the ordaining bishop must have an authentic declaradon from the episcopal Curia that the procedure is regular. The document may be sealed by vicar general, chancellor or secretary.

## CHAPTER III

### THE SUBJECT OF HOLY ORDERS (cc. 968-982)

#### SECTION 1. Valid and lawful Ordination

Since our Lord wished the Sacraments which He instituted to be administered to the faithful till the end of time, His Divine Providence arranged that there should not be lacking in His Church sufficient members of the sacred ministry. He therefore calls many to the priesthood and gives efficacious graces for that state. A definite call is necessary, but no parent, no writer, and no confessor, should venture, in the light of modern teaching, to lay down innumerable and arduous conditions prerequisite for a vocation. It is quite certain that no particular and instinctive attraction to this state is necessary, nor, of course, any clear internal divine inspiration. Any boy who is mentally and physically fit for the life and who has an honest intention and motive of undertaking and fulfilling, with the help of divine grace which will not be wanting, the duties of that life, who, moreover, is leading a good moral Catholic life, may certainly apply as an aspirant to the priesthood. It is, of course, assumed that he has not been in any way forced to adopt the life. If such a candidate has made all the necessary preparations for the priestly life in the matter of studies and a good life, and if he is then accepted for ordination by his bishop (or, if a Religious, by his Superior), he has been chosen by God and his vocation is certain. In regard to his mental and physical fitness and the present good character of his life his confessor may be the judge, or his Superior in the seminary during his probation.

Only a baptized male can be validly ordained. Divine positive law excludes women from strictly priestly functions. Such is the teaching of S. Paul (1 Cor. 14, 34 ; 1 Tim. 2, 11) interpreted by the Fathers and acted upon in the Church, so that certain sects, Pepuzians or Quintilhans, and Gollyridians, who admitted women to the priesthood, were con-



condemned as heretics. Widows and deaconesses were allowed by the Church to perform ceremonies that had no sacramental efficacy, and to exercise certain functions in respect of female catechumens, the sick and the poor. They were never considered as sharing in the true office of deacon.

Infants and aments could validly receive ordination, but the Church forbids it. No intention would be required in their case. In the case of sane adults, some intention is necessary ; an habitual intention is sufficient, a merely external intention is most probably insufficient.

2. For lawful ordination, the ordinand must be endowed, in the opinion of his proper Ordinary, with the qualities required by the canons and must be free from all irregularity or other impediment.

After the Council of Trent<sup>1</sup> the canons forbid the ordination of seculars who would be unnecessary or useless for the churches of the diocese, since their ordination would lay a burden on the diocesan finances and might lead to idle lives, but a bishop is allowed to ordain one of his subjects destined to serve another diocese, and by such ordination the subject becomes affiliated to the other diocese, after due incardination in it.<sup>s</sup>

Originally, occult unworthiness on the part of a subject was not sufficient reason for refusing ordination ; now it can be. The same applies to members of Religious Orders. The reason for such a refusal must be a canonical one. A bishop or a major Superior of Religious may forbid, even without formal trial, any subject whom he thinks to be unfit to receive any Orders. The subject has a right of appeal to the Holy See, and if a Religious, to his General, and thereafter to the Congregation of Religious. The prelate is not bound to state to the subject his reason for refusal.

3. It is strictly forbidden to force anyone to embrace the clerical state or to deter from it one who is fitted for it. Those who force another to embrace the clerical state are excommunicated (c. 2352). This in no way precludes preachers, masters, parents and others from giving advice or even suggestions to the young on the dignity of the

<sup>1</sup> Cone. Trid., s. 22. ch. 16, *de Reform*

<sup>1</sup> P.C.C.J., Aug. 17, 1910.

clerical state, nor docs it preclude confessors from advising penitents to embrace that state. Indeed, a confessor who is acquainted with boys of good and pure lives, fitted mentally and physically for the clerical state, docs well to urge such boys to give some thought to a possible vocation, whether on the home or the foreign missions, and in retreats to boys still at school, and in sermons to the faithful, the preacher may most laudably enlarge with prudence and zeal on the dignity of the priestly vocation, the conditions prerequisite for that state, and the ways and means for the preparatory training for it. He may truthfully say that a large congregation that does not give, at least occasionally, some of its boys to the priesthood is not living, as it were, in the full Catholic atmosphere.<sup>1</sup>

4. The canons, repeating the admonition of the Council of Trent,<sup>2</sup> do not fail to urge that those who aspire to Sacred Orders should be received into a seminary from an early age. That age would normally be about twelve years, for the Fathers of Trent pointed out in the clearest terms, what, indeed, is even more true today, that youth is prone to follow after worldly pleasures. Since the time of the Council and in recent years more especially, the world exercises a fascination on the young and captivates their hearts from the earliest age. The love of pleasure, the desire of change and excitement, the too precocious acquaintance with what should be considered relaxations only for men and women, have made the battle for the boy's soul between the world and the secluded life much more insidious and ferocious than it formerly was. Pope Pius XI reinforced the teaching of Trent by insisting on the greatest necessity today of early training in seminaries in view of the fact that so many parents gave less attention to the Christian education of their children, and the young are exposed to the world's corrupting influence on all sides. All candidates for Orders, must, the canons state, reside in the seminary during their entire theological course, unless the Ordinary, in particular cases, and for a grave reason, give dispensation from this

<sup>1</sup> cf. Appendix, p. 273 : Pope Pius XI on the Priesthood.

<sup>1</sup> Cone. Trid., s. 23, c. 16, *de Ordine*.



law. If such dispensation be given, the candidate who resides outside the seminary' is to be entrusted to a suitable and pious priest who shall exercise vigilance over him and train him to piety.

Mixed seminaries, as they are called, where lay students mix with aspirants to the clerical state, were not allowed by the Council of Trent, and the prohibition has been repeated by Pope Leo XIII and Pope Pius X. So, too, Pope Pius XI wishes the ecclesiastical character of the seminaries to be maintained. The mind of the Church undoubtedly is that even the early studies of young boys who are aspiring to the priesthood should be done in ecclesiastical seminaries. When it is found necessary for clerics to attend State Universities, they must have the explicit permission of their Ordinary to do so. The recent Popes have written forcibly on this point and have enjoined Ordinaries to grant permission rarely and only to well-chosen subjects. In this country, provision is made for clerical graduates to attend the lectures at the Universities, both the ancient and the modern, but they live a religious community life and are rightly restricted from taking full part in University life. The special warning of Pope Pius X against Modernism<sup>1</sup> is very apposite in view of the agnostic and progressively non-religious atmosphere of University cities.

The canons under consideration apply only to clerics. It may here be added that a youth who elects to attend University courses before following his vocation, if he have one, to the clerical life, is in imminent danger of losing the vocation he had, unless stringent precautions are taken. It is much more a matter of atmosphere than of positive poisonous infiltration, though the latter is, unfortunately, not a remote contingency.

## SECTION 2. Canonical Prescriptions affecting Candidates for Orders

I. In former times, some clerics remained in minor Orders and never advanced to the priesthood. The Church now insists that tonsure and minor Orders are to be conferred

<sup>1</sup> *Sacrorum Antistitum*. Sept., 1910.



on those only who intend to proceed to the priesthood and who, it may rightly be hoped, will one day be worthy priests. Nevertheless, one who has received minor Orders and refuses to advance further cannot be obliged by his bishop to do so, nor can he be forbidden to exercise those Orders already received unless he has incurred some canonical impediment, or unless in the judgment of the bishop there is some other grave reason.

2.A bishop is forbidden to confer Sacred Orders on a candidate without moral certainty, based on positive indications, of the canonical fitness of the candidate, for if he did so he would both sin grievously and run the risk of sharing in the sins of others. The necessary positive indication will usually be derived from reports of the candidate's Superiors in the seminary. The insistence of the canon is a reinforcement of forcible words of Popes Benedict XIV and Pius X. The former stated with Apostolic wisdom and zeal that it is better to have a few good and useful priests than many who do not add to the edification of the mystical body of Christ. Pope Pius X stated no less wisely that public morals will decline with the corruption of the clergy.<sup>1</sup> Daily experience proves how true it is that one zealous holy pastor can do more good in a parish than any number of priests who lack the spirit that vivifies, and the zeal that disregards personal comforts.

3. For the lawful reception of Orders, the following conditions are expressly laid down :

(a) The candidate must have been confirmed. The obligation is probably not a grave one.

(b) The candidate's moral character must be worthy of the Order to be conferred.

(c) The canonical ages for the several Orders must have been attained. These are :

(i) For tonsure and minor Orders a more mature age than formerly, not, however, exactly determined, is now insisted upon, since they are not received before the inception of theological studies in a seminary. These studies are to

<sup>1</sup> cf. the severe words of Pope Pius X on the state of some Venezuelan clerics (A.A.S., 1912, p. 23).

be interpreted strictly. They would not be acknowledged unless preceded by philosophical studies.

(ii) The subdiaconate may not be conferred before the age of twenty-one years completed, and only towards the end of the third year of the theological course. A year means a full school year lasting at least nine months, to be reckoned according to the calendar.

(iii) The diaconate may not be conferred before the age of twenty-two years completed, and only after the beginning of the fourth year of the course.

(iv) The priesthood may not be conferred before the age of twenty-four years completed, and only after the first half of the fourth year of the course.

Dispensation for ordination before canonical age is sometimes given for a good reason, such as the needs of the Church. Dispensation is also given for studies outside the seminary.

(d) The requisite theological knowledge required for Orders must be acquired in a properly constituted seminary, after two years of philosophical studies. Theological studies must extend to four years. The quality of the knowledge is usually tested by examinations, in which the examiners have an obligation in conscience to see that students do not embark on the manifold duties of the ministry with ill-digested, or still worse, inaccurate and insufficient knowledge. The defects of a hurried training can hardly ever be remedied.<sup>1</sup> The main branches of theological studies are Dogmatic and Moral Theology, Scripture, Church History and Canon Law. Accessory branches are Biblical Greek, Hebrew, Homiletics, Patrology, Liturgy, Archaeology, Ecclesiastical Art and the Chant. The Congregation of Religious (March, 1915) ruled that a student who, owing to ill-health or military obligations, was absent for not more than three months from the year's course could make up these studies privately and pass the examinations.

(r) Furthermore, Orders are to be received in their proper succession, and ordination *per saltum* is altogether forbidden, that is, the reception of a higher Order without reception

<sup>1</sup> Pope Pius XI, *Unigenitus*, March 19, 1924.



of the preceding one. This law is not invalidating, but one who has maliciously, i.e., *mala fide*, received an Order *per saltum* is *ipso facto* suspended from the exercise of the Order received (c. 2374).<sup>1</sup>

(/) The intervals or *interstitia* between successive Orders are to be observed and during these intervals the respective Orders should be exercised according to the prescription of the bishop. The minor Orders are usually exercised in seminaries and in Religious Institutes, but the spirit of the law—if not the precise obligation—is that the higher Orders should certainly be exercised in turn. The intervals between tonsure and the office of doorkeeper, and between the several minor Orders are left to the prudent judgment of the bishop. These intervals may be very short, for the convenience of the ordaining bishop. The acolyte may not be advanced to the subdiaconate until at least one year has elapsed, the subdeacon to the diaconate and the deacon to the priesthood until at least three months have elapsed, unless the bishop decide otherwise for the needs and utility of the Church. It is not permitted, except with particular leave of the Roman Pontiff, to confer the minor Orders and subdiaconate on one and the same day, nor two Sacred Orders on the same day. Contrary custom is reprobated. The tonsure may not be conferred on a subject with any of the minor Orders, nor may all the minor Orders be conferred together on a subject. But the prohibition against all the minor Orders being conferred together is not so severe as to preclude a bishop from availing himself of a contrary immemorial custom, if such exists.

4. Every cleric, on being ordained to major Orders, must have a canonical title.

Originally, a church or monastery was assigned to an ordained cleric, to which he would give his services, and

<sup>1</sup> Titius, during the ceremony of ordination to subdiaconate and diaconate withheld his intention, did not wish to receive those Orders, nor to bind himself to perpetual chastity. He received the priesthood, however, with the right intention. The S.C.S.O., March 2, 1842, replied that he was dispensed from suspension and irregularity for receiving the higher Order before the lower Orders, was to receive subdiaconate and diaconate, and could then celebrate Mass and exercise all other priestly functions (*Fontes C.J.t* IV, n. 887).

by which he would be maintained. At his death, his successor used this source of maintenance or revenue. This was called benefice. Later, personal income or patrimony was a sufficient title, and later still, a cleric could be ordained on the title of service of a diocese or mission. For secular clerics the canonical title by preference was that of benefice. Some of the churches of Rome, the titular churches of the Cardinals, had a number of clerics assigned to them, who were maintained out of the revenues of these churches or tides. The Lateran Council decreed that if a bishop ordained a subject as deacon or priest without the title, he would have to support him, unless the latter had independent means. Hence, shortly after (Innocent III, 1208), patrimony became a sufficient title. This fact gave rise to some clerics wandering about and abandoning themselves to an idle life. The Council of Trent remedied this abuse by forbidding a bishop to ordain a cleric on such title, unless the needs or advantage of his diocese required the services of the cleric, and with the proviso that the cleric so ordained should be attached to a definite church. The *titulus pensionis* was afterwards added and later induits admitted, for foreign countries and for such as had no benefices, the tide of service of the diocese, mission, church, or administration. The three titles mentioned by the *Codex* are those of benefice, patrimony and pension, ecclesiastical or State.

For Religious regulars, their solemn vows entitle them to maintenance from their Institute and they are ordained *titulo professionis seu paupertatis* ; their canonical title is their solemn religious profession, or, as it is styled, the title of poverty. Religious of simple vows after taking perpetual vows are ordained on the title of simple profession or common board or Congregation or some similar title ; Religious of temporary' vows, novices, members of pious communities who do not take vows, would have subjects ordained precisely as seculars, unless they have special induits.

A title is, therefore, necessary for every Order from the subdiaconate ; no exception is made, for it is fitting that they who are devoted to the ministry should be maintained by the faithful and should not be obliged to beg or to exercise



unbecoming trades. The title of ordination must be a

to support him becomingly, in accordance with the standards assigned by Ordinaries for the various needs of places and times. One who is in Holy Orders may lose his title. If he do so, he must procure another, unless in the judgment of his bishop his maintenance is already sufficiently provided for.

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## CHAPTER IV

### IRREGULARITIES AND IMPEDIMENTS (cc. 983-991)

#### SECTION 1. Nature of Irregularity

An irregularity is a canonical impediment, of its nature perpetual, which primarily is an obstacle to the reception of Orders, secondarily to the exercise of Orders already received. It is not a penalty but a disposition of law for the common good, that is, for the honourable and fitting condition of the clerical state. Temporary obstacles to ordination, such as defect of age, the married state, are simple impediments.

Irregularity may arise from mere defect or from delinquency. The former may be incurred by those who are ignorant of it, the latter only through grave fault.

#### SECTION 2. Irregularity due to Defect

The following are cases of irregularity by defect :

1. Illegitimacy, whether public or occult, unless the illegitimate person has been legitimated by the subsequent marriage of his parents (c. 1116),<sup>1</sup> or by papal rescript, or has made solemn religious profession. But original illegitimacy, though rectified, is a bar to the dignity of Cardinal (c. 232) and bishop (c. 331). Legitimacy may be proved from the baptismal register, hence the importance of recording the legitimation of a child by the subsequent marriage of its parents. Foundlings are considered legitimate unless the contrary is proved. This irregularity is *defectus natalium*.

2. Bodily defect due to mutilation, weakness, deformity, or smallness of stature prevents the exercise of the ministry of the altar. If Orders have been received, a graver defect in this category would be required to debar one from exercising an Order already legitimately received, nor

<sup>1</sup> Legitimated offspring may be received into the seminary (A.A.S., 1930, p. 305). Offspring is not legitimated by the subsequent marriage of its parents who were subject to the impediment of either age or difference of worship, even though the impediment had ceased when the parents married; P.C.C.J., Dec. 6, 1930. \_\_\_\_\_

would the defect be an obstacle to the exercise of those acts which could be duly performed. Such defects would be diminutive stature, very ill-favoured appearance, the absence of a finger or a hand for handling the Sacred Host or chalice, the absence of the right thumb or forefinger, an arm so stiff that it could not be bent for breaking the Host or making the sign of the cross, complete loss of sight or very defective eyesight that is incurable, not, however, the loss of the so-called canonical or left eye ; also failing eyesight so advanced that only large type could be read, in which case the sufferer may obtain a dispensation to celebrate daily the votive Mass of our Lady or a requiem Mass in accordance with the Rubrics. Furthermore, total deafness or dumbness and excessive stammering are irregularities, and the loss of a leg, and advanced gout or paralysis that prevent genuflection, excessive lameness, *paralysis agitans* and S. Vitus's dance.

3. Epilepsy, insanity, diabolical possession, past or present. The *Codex* makes no distinction between epilepsy before and after puberty. Dispensation may be granted if the malady has been arrested for two years. If it supervenes after ordination, dispensation must be got. The Ordinary can dispense his own subjects from this irregularity for the exercise of Orders already received.

4. The fact of two or more marriages having been validly contracted. Those who remarry are termed bigamists in the canonical sense.

5. Infamy of law, that is, juridical loss of good name. This penalty is inflicted by law (c. 2293) for certain crimes, such as mishandling the sacred species or taking or keeping them for an evil purpose (c. 2320), violation of corpses or tombs for theft or other evil purposes (c. 2328), violent physical attack on the Roman Pontiff. Infamy of law is also incurred by duellists and their seconds (c. 2351), true bigamists (c. 2356), lay people guilty of certain sexual offences (c. 2357), apostates, heretics and schismatics who subscribe or publicly adhere to a sect (c. 2314). The foregoing crimes entail infamy *ipso facto*. Infamy induced by civil law would probably entail irregularity.

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6. A judge who has pronounced sentence of death is rendered irregular, as also are those who have held the office of executioner (hangman and electrocutor) and all their voluntary' and immediate ministers in the execution. These two irregularities are termed *defectus lenitatis*. The irregularity does not extend to soldiers who are ordered to kill a culprit, nor their officer, nor those who erect the scaffold or prepare the chair for electrocution. The irregularity would not be incurred by one not baptized.

### SECTION 3. Irregularity due to Delinquency

Irregularity' also arises from delinquency. The following are cases, and it must be observed (c. 986) that the crimes mentioned do not entail irregularity' unless they are grievous sins, external, either public or occult, and committed after Baptism. All these conditions must be present that irregularity may arise, except that if Baptism is received outside the case of necessity from a non-Catholic, that fact at once gives rise to irregularity. The following incur the irregularity from crime :

1. Apostates from the Faith, heretics, schismatics, atheists.<sup>1</sup>
2. Those who, outside necessity, have allowed baptism in any form to be conferred on them by non-Catholics. They must have been aware of the non-Catholic character of the baptism. This irregularity probably does not arise from baptism by infidels.
3. Those who have dared to attempt to contract marriage or to go through only the civil form, whilst they were themselves bound by the marriage tie or by Sacred Orders or religious vows, even simple and temporary', and those also who, being free to marry, have dared to attempt to contract marriage with a woman bound by religious vows or by the valid matrimonial tie. Marriage is attempted by those who conceal an impediment and present themselves for marriage to a minister of the Church. What is usually called civil marriage is here termed a civil act only. Such attempted marriages, and valid marriages contracted by those under temporary or simple vows, are termed analogous

<sup>1</sup> P-C.C.J., July 30, 1934.



bigamy (*bigamia simililidinarid*), because they are a species of carnal marriage attempted or entered upon after spiritual espousals.

4. Those who have committed voluntary homicide, or have procured the abortion of a human fetus, and all who co-operate in it, provided the effect, i.e., abortion, actually took place. The voluntary homicide here meant is directly voluntary homicide that results immediately from some unjust act, such as shooting, stabbing with a knife, poisoning, not the homicide that results from an act of legitimate self-defence nor accidental manslaughter.<sup>1</sup> The performance without necessity of some dangerous action or amusement, known to be dangerous, which results in manslaughter, entails irregularity. The abortion here meant is that which is caused intentionally or through grievous culpability ; the human fetus is a fetus that is animated by a rational soul. No distinction is made between the male and the female fetus. Abortion could not take place immediately or for some time after sexual union, since some time is required for fertilization. No one knows what the minimum interval is between intercourse and fertilization, and it is certain that vaginal lotions or curetting of the uterus before fertilization could take place are not included in this context. Discussions on this aspect of the matter are not practical since abortion is not resorted to until a considerable time after conception. We believe, however, that the employment of the Grafenberg ring or spiral, which prevents the nidation of the fertilized ovum in the uterus, would be abortion if such an ovum were present. But as this cannot be known, irregularity would not be incurred by one who inserted or supplied the ring for the purpose of contraception. All who co-operate positively in voluntary homicide or in procuring abortion are included in the canon.

5. Those who have mutilated themselves or others and

<sup>1</sup> Clerics who were conscripted to serve in the War were to be dispensed from irregularity by their Ordinaries (S.C.C., Oct, 25, 1918) ; if they volunteered to serve, they had to have recourse to the Holy See, unless, with the permission of the Ordinary, they volunteer so as to be free the sooner (c. 141). Clerics in Sacred Orders serving in R.A.M.C. and freely transferring to the active corps, even though they had not caused death or mutilation, required Apostolic dispensation from irregularity (S.C.C., March 28, 1919).

those who have attempted suicide. Mutilation here comprises unnecessary mutilation by oneself or by another. Mutilation means the cutting away a member of the body that has its proper function, as a foot, a hand, an eye, the tongue, the testicles, the *vasa deferentia* in males, the ovary, the fallopian tubes, the womb. Consequently, those who sterilize others, not to preserve the life of the body, but merely to prevent procreation, incur this irregularity. If, therefore, the State enjoined eugenic sterilization of the mentally defective to prevent defectives propagating, the operating surgeon would become irregular. Where there are double members of a sense, as for sight, hearing, smell, touch, procreation, it appears probable that the mutilation of one of the members is true mutilation.

6. Clerics who practise the medical or surgical arts, which are forbidden to them, incur irregularity if the death of a patient results from their practice. Irregularity ensues even if the death follows through no fault of the cleric, provided it follow directly from his action. An Apostolic induit is required for the practice of medicine or surgery by a cleric (c. 139, 2) ; such a cleric would not incur irregularity if he practised by virtue of an induit and the issue was fatal.

7. Those who exercise an act of Orders reserved to clerics in major Orders, if they have not received these Orders, or having received them have been forbidden to exercise them by canonical penalty, personal, medicinal, vindictive or local. The irregularity would arise if a layman or a cleric in minor Orders knowingly or solemnly acted as subdeacon. He would, however, have to wear the vestments proper to the Order which he wrongly exercised. One in minor Orders would not incur the irregularity by acting as subdeacon at Solemn Mass if he did not wear the maniple, or as deacon, if he did not wear the stole, or even if, as subdeacon, he wore the maniple but did not pour the water into the chalice at the Offertory or purify the chalice after Communion. Though the Cantors of the Passion on Good Friday should be at least deacons, in default of a third deacon one not a deacon might chant the part of the Synagoga.



This custom is tolerated. The canon also forbids, under irregularity, a subdeacon to act as deacon or a deacon as priest. A deacon may baptize solemnly, for he is commissioned to do so by law.

One ordained by a notorious apostate cannot exercise his Orders without dispensation, nor one who has legitimately quitted the religious state before he has been accepted by a bishop, but the violation of such prohibitions does not entail irregularity.<sup>1</sup> Irregularity arises from disregard of censure or penalty, if these are personally inflicted. When the interdict is local and not personal, the canons (c. 2271) allow many exceptions.

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#### SECTION 4. Impediments to the Reception of Orders

Simple impediments to the reception of Orders exist for the following :

I. The sons of non-Catholics as long as their parents persist in their error. The son means son strictly, that is, descendants in the paternal line to the first degree. The impediment exists if even only one parent is non-Catholic, as in the case of a mixed marriage with dispensation,<sup>2</sup> and probably even after the non-Catholic parent has died.<sup>3</sup> If the parent is converted before the ordination of the son, the impediment ceases. Probably it does not exist if a Catholic parent has become a heretic or schismatic after the birth of the son.

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2. A married man whilst his wife is living may not receive Orders. If a dispensation is given, the wife usually has to take a vow of chastity in a Religious Institute, or, if advanced in age, a private vow of chastity in the world.

3. Those who engage in an office or administration forbidden to clerics and of which they have to give an account, until they have given up the office or administration, have rendered their account, and have become free. Thus, clerics are not to engage in secular business (c. 139), for

<sup>1</sup> Verm., III, n. 711.

<sup>2</sup> P.C.C.J., Oct. 16, 1919 ; July 14, 1922.

<sup>3</sup> Verm., III, n. 662.



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this would occupy their attention to the exclusion of their duties, and might discredit their state.

4. Slaves, strictly so called, before they have been freed.

5. Those bound to common military service by civil law until they have fulfilled the term of service. The impediment does not extend to military exercises prescribed by law for a short period from time to time nor the duty of serving in a case of emergency. Ambulance work is not common military service. But the impediment affects those who will probably be called to service, though not yet called, owing to age or temporary unfitness.<sup>1</sup>

6. Neophytes (converts), until, in the judgment of the Ordinary, they have been sufficiently tested ; probably not converts baptized conditionally.

7. Those who are infamous in fact, so long as, in the judgment of the Ordinary, the infamy persists. Such infamy is contracted (c. 2293) when, on account of a crime or depraved conduct, a person has lost the good esteem of prudent and right-minded people.

#### Notes on Irregularity

1. Ignorance of irregularities or impediments does not excuse a candidate from incurring them. As irregularity supposes a grave sin in the case of irregularities for delinquency, an infant cannot incur them, nor could a baptized adult who is not guilty of sin that is external and materially and formally grave.

2. Irregularities and impediments are multiplied if their juridical sources are multiple, not, however, by a mere repetition of the same cause, except in the case of irregularity arising from voluntary homicide. Thus, the repeated exercises of Orders not received will entail one irregularity, but repeated homicide will entail multiple irregularity. The several juridical sources of irregularity are the defects and crimes enumerated in the canons. Multiple bodily defect, v.g., blindness and lameness, require separate dispensations.

<sup>1</sup> P.C.C.J., June 3, 1918.

## SECTION 5. Dispensation from Irregularities and Impediments

1.The Pope has power to dispense in all strictly canonical impediments. Occult cases can be dealt with by the Sacred Penitentiary, public cases by the Congregation of the Discipline of the Sacraments for seculars, and for Religious, by the Congregation of Religious. From irregularities doubtful in fact, the Ordinary can dispense, if they are usually dispensed by the Holy See (c. 15), as also if it is a case of great urgency (c. 81).

2.Local Ordinaries can dispense personally or through a delegate from all irregularities arising from occult delinquency, i.e., not known at all or known to a few persons only and not likely to become generally known. There are, however, two exceptions, namely, irregularity arising from voluntary homicide or effective abortion, and irregularity that has been brought before the Ecclesiastical Court. After the War, fuller powers were granted for the time to bishops. Ordinaries in Religious Orders have the same power in respect of their subjects, and sometimes, by privilege, even greater powers.

3.A confessor has the same power with the same exceptions in occult cases in matters of urgency when recourse to the Ordinary is impossible and there is danger of serious harm or defamation. But this power of a confessor can only be used that the penitent may lawfully exercise the Orders already received. This power may be exercised out of actual confession. No recourse is necessary in these cases. Though voluntary homicide and effective abortion are excluded, the irregularity arising from these could be temporarily suspended if defamation would arise by remaining subject to it. Recourse is, however, subsequently necessary.

In petitioning for dispensation from irregularities or impediments all are to be mentioned. If some were omitted in good faith, they are dispensed by a general dispensation, always excepting the two cases mentioned above ; if some were omitted in bad faith, they are not

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dispensed. Furthermore, the actual number of crimes must be mentioned in cases of voluntary homicide under pain of nullity. A dispensation granted in general terms avails for major as well as minor Orders, but not for promotion to Cardinalate, Episcopacy, Abbacy or Prelacy *nullius* or higher office in an exempt clerical Order. A dispensation granted for the extra-sacramental forum of conscience should be committed to writing and evidence of it kept in the secret archives of the episcopal Curia.



## CHAPTER V

### PRELIMINARIES TO ORDINATION (cc. 992-1001)

#### SECTION 1. The due Preparation for Ordination

Both secular and Religious candidates for Orders must give timely notice of their intention of seeking ordination to the bishop or his representative. This prescription of law is now fulfilled more easily than formerly owing to the education of both seculars and Religious in seminaries.

2. The following documents must be presented by candidates for ordination : A certificate of their last Order received, or, if they are to receive tonsure, of their Baptism and Confirmation, the proof of Baptism being usually obtained from the parish register, but the word of one trustworthy witness, or the affirmation under oath of the subject, if baptized and confirmed in adult age, is sufficient ; certificate of studies, being a guarantee that the requisite studies (c. 976) have been done ; certificate of good character from the Rector of the seminary or of the priest who had the candidate in his charge if outside the seminary ; testimonial letters from the Ordinary of the places in which the candidate resided long enough to contract a canonical impediment ; in the case of candidates of Religious Institutes, a certificate of freedom from impediment issued by the major Religious Superior is required. The period during which a canonical impediment can be incurred is normally three months in the case of a soldier, in other cases six months after puberty (14 years). But the ordaining bishop may demand testimonial letters for a shorter period of residence and for the period before puberty.

The local Ordinary of the candidate may not be sufficiently acquainted with the candidate to issue a certificate. In that case he may take the testimony of the candidate on oath as to his freedom. New testimonial letters will be necessary if, before ordination and after issue of the certificate, the candidate has again resided in the same territory for the stated length of time.

3- Both secular and Religious candidates must pass an exact examination relatively to the Order they are to receive, as also one in other treatises of theology', and it is within the power of the ordaining bishop to settle the method of examination, the examiners and the theological treatises. The bishop who has the personal right of ordaining or giving dimissorial letters has the right to examine candidates, but he may, for a good reason, commit the duty to another ordaining bishop if the latter consents. Even after an examination, a bishop who is petitioned to ordain one who is not his own subject, secular or Religious, is not obliged to accept the testimony offered, but may decline to ordain one whom he conscientiously thinks to be unfit.

## SECTION 2. The Publication of Notice of Ordination

1. The names of candidates for the several sacred Orders, unless they are Religious who have taken perpetual vows, solemn or simple, must be publicly announced in their actual parochial churches. The Ordinary' may dispense with the publication, or may enforce it in other churches, or may have the names posted at the church doors during several days, one of which must be a day of obligation. As in the case of the banns of marriage, the publications are to be made on a holy day of obligation in the church during Mass or on another day at a time when there is a large congregation present. If the candidate has not received Sacred Orders within six months after publication, the publications must be repeated unless the Ordinary judge otherwise. All the faithful are bound to reveal to the Ordinary or the parish priest any impediments to ordination which they may know, and must do so before not after the ordination. This is an obligation of Natural law which the canons enforce.

2. The Ordinary of the candidate is to commission the parish priest who made the publications, and another also, if he thinks fit, to make diligent inquiry from trustworthy witnesses concerning the life and conduct of the candidate, and to send letters to the episcopal Curia attesting this inquiry and the publications. The Ordinary of the



candidate should not neglect to make additional inquiries, even privately, if he judge it to be necessary or opportune. During the service of ordination, the archdeacon is asked by the ordaining bishop if the candidates are worthy. He may answer in the affirmative if he knows nothing to the contrary.

Those in charge of clerical seminaries undertake a grave responsibility when they advise candidates to receive Sacred Orders. It is imprudent in the highest degree to expect that ordination will work a change in the character of a candidate, at least in normal cases. If a candidate is patently unfit to proceed to the priesthood, he should be dismissed from the seminary betimes, for the flock of Christ will derive more spiritual good and non-Catholics will be converted the more readily by a few good priests than by a multitude of priests whose lives are unspiritual. Our Holy Father, Pope Pius XI, has insisted on the full course of theological studies being taken, even though the people are in need of priests, for nothing will make up for the lack of preparation. The years spent in a seminary are to be a period of both scholastic and spiritual training.

### SECTION 3. Spiritual Exercises

Candidates for the first tonsure and minor Orders are to pass at least three full days in a spiritual retreat, and candidates for the Sacred Orders at least six full days. If a candidate receives several of the Sacred Orders within the same six months or less, the Ordinary of the candidate may reduce the time of the retreat before the diaconate to three days but not less. If major Orders are given on successive days so that the prescription set out above could not be fulfilled, the first of the Orders received is to be preceded by at least six full days' retreat, and the other Orders if possible, according to the judgment of the Ordinary, by at least one day of spiritual retreat.<sup>1</sup> After the completion of the spiritual retreat, if any of the Sacred Orders is deferred beyond six months, the retreat is to be repeated. If the

<sup>1</sup> S.C. de Sacr., May 2, 1928.



delay was shorter, the Ordinary is to judge whether or not the retreat is to be repeated. The retreat is to be normally done in the seminary or some religious house. The canons insist on notificadon of the completion of the retreat being given to the Ordinary of the candidate by the Superior of the house in which it was done, and in the case of Religious by the testimony of the major Superior.

#### Note on the Examination of Candidates for Ordination

The Sacred Congregation of the Sacraments issued an Instruction (Dec. 27, 1930)<sup>1</sup> to the Most Reverend Ordinaries, on the testing of candidates before they are promoted to Orders. The Instruction goes into most minute detail as to the nature of the investigations which are to be made. The moral character of the candidate is to be tested before ordination. Precise information is to be solicited before the first tonsure and minor Orders, and again before major Orders. Furthermore, the candidate is to make a Declaration of his intention in receiving Orders. The parish priest has to sign a document which embodies the questions to be put.<sup>2</sup>

<sup>1</sup> cf. Woywod, *Canonical Decisions of the Holy See*, Appendix XIV, for the text of this Instruction. See also p. 50 *infra* for a Summary of an Instruction of the Sacred Congregation of Religious on this matter.

\* The English form of the Declaration is given on p. 51 *infra*, and the Latin form on p. 272 *infra*.

## CHAPTER VI

### ACTUAL ORDINATION (cc. 1002-1011)

#### SECTION 1. The Rites and Ceremonies of Ordination

The rite of ordaining sacred ministers is always to be faithfully observed in every detail without omission or change. As considerable doubt exists as to what constitutes, in some Orders, the essential rite, an omission may necessitate the repetition of the whole rite. Even the inversion of parts of the rite may render ordination doubtful.<sup>1</sup> The Mass of ordination or of episcopal consecration must always be celebrated by the minister of ordination or consecration.

When the case arises of a candidate seeking some higher Order, such as the subdiaconate, in the Latin rite after ordination to lower Orders in the Oriental rite, he must first receive those lower Orders which were omitted in the Oriental rite. The Greek Church confers only the lectorate formally and distinctly, and the other three minor Orders with the subdiaconate.

Candidates who receive the major Orders are obliged to receive Holy Communion during the respective ordination Masses. The obligation is thought to be grave in the case of the ordination Mass of the priesthood, for each newly-ordained priest offers Sacrifice with the ordaining bishop.

#### SECTION 2. The Time and Place of Ordination

Episcopal consecration is to be conferred during Mass on a Sunday or the feast of an Apostle, that is, the *dies natalitius* or anniversary. The major Orders are to be conferred during Mass on an Ember Saturday, the Saturday before Passion Sunday, or Holy Saturday. For a grave reason, the bishop may ordain on any Sunday or holy day of obligation (feasts suppressed by the Code not included).<sup>2</sup> First tonsure may be conferred on any day and at any hour ; minor Orders on the morning of any Sunday or any 'double' feast.

<sup>1</sup> But cf. C.I., Sect. 2, p. 15.

<sup>2</sup> The term *festum de precepto* of canon 1006, 3 does not include feasts suppressed in the universal Church by the Code : cf. P.C.C.J., May 15, 1936.

Custom contrary to these prescriptions is reprobated, and they are to be observed when a bishop of the Latin rite ordains, by virtue of Apostolic induit, a cleric of the Oriental rite, or conversely. The privilege has not been withdrawn in virtue of which some Religious Orders may have their members ordained *extra tempora*, provided major Orders are conferred on a Sunday or a holiday of obligation (even suppressed).<sup>1</sup> When, for any reason, ordination has to be repeated or some part of the rite supplied, absolutely or conditionally, this may take place privately and outside the usually prescribed times.

No bishop may confer Orders requiring the use of pontificals outside his own territor}' without the permission of the local Ordinary', exception being made for Cardinals.

General ordinations (those namely that take place on the six regular Saturdays) are to be publicly celebrated in the cathedral church in presence of the Canons of the cathedral. The latter may be obliged to be present under pain of censure. If ordinations are celebrated in some other church of the diocese, it should be one of the more important of the churches and in presence of the local clergy if circumstances permit. But a bishop is not forbidden, for a just reason, to confer Orders on some particular occasions in other churches or the chapel of the episcopal residence or of the seminary or of a house of Religious. The first tonsure and minor Orders may be conferred in a private oratory.

The prayers imposed by the bishop on those ordained priests of reciting a Nocturn means reciting the antiphons and psalms of the first Nocturn of the office of the day. It is not an obligation under sin, neither are the three Masses said for the ordaining bishop a matter of obligation under sin. Indeed, none of the prayers asked for by the bishop ordaining to tonsure or any of the orders is a matter of obligation under sin.

<sup>1</sup> cf. Vcrm.-Creus., *Epit.*, II, n. 269.



### SECTION 3. Notification and Record of Ordination

1. After ordination, the names of each one ordained and of the ordaining minister, the place and date of ordination, are to be entered in a special register, and this is to be carefully kept in the archives of the local Curia, as also are all documents relating to the several ordinations. Each of the ordained is to receive an authentic certificate of his ordination. This is to be presented to his own Ordinary if he was ordained by another bishop, in order that the record of the ordination may be kept in a special register in the archives.

2. Since now the record of ordination to the subdiaconate is to appear in the baptismal register (c. 470, 2), the local Ordinary in the case of ordination of the secular clergy, and the major Superior in the case of Religious, must send notification of the Order of subdiaconate received to the parish priest in whose parish the subject was baptized. The said parish priest must enter the record in the baptismal register.

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## APPENDIX

Summary of an Instruction of the Sacred Congregation of Religious to the Superiors of Clerical Religious Institutes and Societies on the clerical and religious formation of candidates for the priesthood and of the scrutiny before the reception of Orders (Dec. 1, 1931 : A.A.S., March, 1932, p. 74).

1. Superiors shall give diligent thought to the early training of Religious candidates in what are called the lower or preparatory studies. These studies must be completed before admission to the noviciate unless a grave reason suggest otherwise, and in the exceptional cases, the studies must be completed before the course of philosophy is begun.

2. Youths should not be admitted unless they give evidence of a divine vocation and there is hope that they will be fruitfully applied to the ministry for the whole of their lives. Besides the testimonial letters prescribed, Superiors should not neglect to inquire into the family history of a candidate. The common indications of a call to religion are not sufficient in a candidate for the priesthood.

3. After the noviciate, such Religious are to reside in a house where the rules are fully observed, especially those of common life and poverty. Youths should ever strive after virtue, their minds should not be withdrawn from their studies by the reading of books or papers calculated to distract them from their studies, and they should refrain from such physical exercises as do not become clerics.

4. Journeys are not to be allowed except for a grave reason, nor absences from the houses of studies.

5. Immediately after ordination, priests are not to be left to their own devices, but Superiors should have a particular care of them. To this end, a special period of training must be undergone in some house of perfect and regular religious observance, and studies continued.

6. Novices, before taking their temporary vows, must make a written statement to be given to the Superior concerning their vocation to the religious and clerical life, and of their firm determination to devote themselves for life to the clerical service in the religious state.

7. Before proceeding to the subdiaconate, the candidate must be examined again, and his present state compared with his former state in respect of religious discipline and progress in clerical studies. The candidate for subdiaconate must make the following Declaration : “ I, the undersigned, a member of the Order (Congregation) N. N., having petitioned my Superior for reception of the subdiaconate, do hereby testify under oath (1) that I freely ask for the said Order and with entire free will wish to receive the same with all its annexed obligations, not being impelled thereto by any duress, force, or fear, (2) that I am acquainted with all the obligations of the said Order, which I willingly accept and with God’s help intend to observe diligently all my life, (3) that I clearly perceive the obligations of the vow of chastity and the law of celibacy, and firmly intend to observe the same with God’s help all my life, (4) that with unfeigned faith, I promise to fulfil in every detail and in accordance with the sacred canons all that my Superiors may enjoin according to the discipline of the Church, being prepared to give an example to others of virtue in word and work, that I may deserve by the undertaking of so good a duty to receive the reward promised by God. All this I testify and swear upon these Holy Gospels of God which I touch with my hand.” [Date and name.]<sup>1</sup> Before ordination to the subdiaconate, the candidate must make the profession of faith and take the oath against Modernism (c. 1406, 7; S.O., March 22, 1918).

<sup>1</sup> The Latin form of this Declaration is given on p. 272 *infra*.





# TREATISE XVIII

## MARRIAGE

### CHAPTER I

#### MARRIAGE IN GENERAL (cc. 1012, 1013)

##### SECTION 1. The Nature of Marriage

Marriage is the lawful contract between man and woman by which is given and accepted the exclusive and perpetual right to those mutual bodily functions which are naturally apt to generate offspring. The primary purpose of the contract is the generation and education of offspring ; its secondary purpose is mutual help and the allaying of concupiscence (c. 1013, 1). When entered into by baptized Christians it is a sacramental contract, inasmuch as the contract has been raised by Christ to the dignity of a Sacrament. It is styled and is a contract, because it is a bilateral agreement between man and woman ; it is a lawful contract, when it is conformed to law, Natural, divine positive, and Ecclesiastical ; it is a contract between male and female, since marriage was ordained by God to be the means of the generation and upbringing of offspring. The contract itself, when legitimately entered into by baptized Christians, is the Sacrament, and there is no distinction between them.

2. The Author of marriage is God Himself, Who so constituted human nature as to will its permanence and propagation, and to will the means to that end, namely, prolific sexual intercourse, which would not be possible unless God had also willed to implant in human nature both the capacity to propagate and the mutual attraction of male and female. But God did not intend merely the issue of sexual intercourse ; He intended it so to realize His divine purposes that offspring should be reared and educated in a befitting manner. This can be normally accomplished only by the marital union of one man with one woman,

and such a union as is intrinsically indissoluble till the death of one of the two, for only thus can the offspring be rightly generated, reared and educated. Reason itself apprehends this truth, and experience endorses the findings of reason, so that right reason condemns polygamy, polyandry, fornication, and all irregular sexual relations as contrary to Natural law. God Himself promulgated the law of marriage through Adam : “ This now is bone of my bones and flesh of my flesh ; wherefore, a man shall leave father and mother and shall cleave to his wife, and they shall be two in one flesh ” (Gen. 2, 23). The power of generating, the sexual tendency in man, and the fact of generation are not the consequences of sin but are natural.

3. All men may contract marriage unless forbidden by law (c. 1035). Law that forbids marriage may be Natural or positive, divine or human. There are, therefore, natural impediments to marriage, such as defect of age ; divinely determined impediments, as an already existing bond ; ecclesiastical impediments affecting the baptized, as vow, consanguinity ; civil impediments affecting the unbaptized, as non-fulfilment of legal forms.<sup>1</sup> Whether, in point of fact, a State does or does not legally void certain marriages depends on the particular laws in force and the mind of the legislator.

## SECTION 2. The Matrimonial Contract

Marriage as a contract has, for its material object, the persons who enter into the contract. Its formal object is the mutual relation of the contracting parties, to the exclusion of others, in respect of the right that each party has over the body of the other, for those acts which normally result in generation, and the correlative obligation of allowing that right to be exercised. These rights and duties are identical in husband and wife, though in other relations the wife is subject to the authority of the husband, since he is by nature and divine precept the head of the family.

<sup>1</sup> Wernz-Vidal, V, n. 67; Cappello, III, n. 75; Gasparri, *Tract. Can. de Matri*<sup>TM</sup>, I, n. 240.



Pope Pius XI, in his Encyclical letter, *Casti Connubii*, explained this subjection in the following terms : “ This subjection, however, does not deny or take away the liberty which fully belongs to the woman both in view of her dignity as a human person, and in view of her most noble office as wife and mother and companion ; nor does it bid her obey her husband’s every request if not in harmony with right reason or with the dignity due to a wife ; nor, in fine, does it imply that the wife should be put on a level with those persons who in law are called minors, to whom it is not customary to allow free exercise of their rights on account of their lack of mature judgment, or of their ignorance of human affairs. But it forbids that exaggerated liberty which cares not for the good of the family ; it forbids that in this body, which is the family, the heart be separated from the head to the great detriment of the whole body and the proximate danger of ruin. For if the man is the head, the woman is the heart, and as he occupies the chief place in ruling, so she may and ought to claim for herself the chief place in love.

“ Again, this subjection of wife to husband in its degree and manner may vary according to the different condition of persons, place and time. In fact, if the husband neglect his duty, it falls to the wife to take his place in directing the family. But the structure of the family and its fundamental law, established and confirmed by God, must always and everywhere be maintained intact. With great wisdom, Our predecessor Leo XIII, of happy memory, in the Encyclical on Christian Marriage, which We have already mentioned, speaking of this order to be maintained between man and wife, teaches : ‘ The man is ruler of the family, and the head of the woman ; but because she is flesh of his flesh and bone of his bone, let her be subject and obedient to the man, not as a servant but as a companion, so that nothing be lacking of honour or dignity in the obedience which she pays. Let divine charity be the constant guide of their mutual relations, both in him who rules and in her who obeys, since each bears the image, the one of Christ, the other of the Church.’ ”

## MARRIAGE

The essence of this contract, when it is actually made (*matrimonium in fieri*), is the mutual consent of the parties, whereby the right is given and accepted to the use of the bodily functions, perpetual and exclusive, in respect of true sexual intercourse. The root, then, of the marriage contract is this consent (c. 1081). Consequently, when the Church validates a marriage by what is called a *sanatio in radice*, it validates the hitherto invalid consent.

The essence of marriage, after the contract has been entered upon (*matrimonium infacto esse*), is life lived in common and together as husband and wife, and the matrimonial bond.

### SECTION 3. The Married State

Marriage and the married state are morally good, since God is the Author of marriage. Our Lord raised Christian marriage to the dignity of a Sacrament. It is an honourable state (Heb. 13, 4) ; “He that giveth his virgin (daughter) in marriage doth well ” (1 Cor. 7, 38) ; marriage dues must be rendered (1 Cor. 7, 3) ; our Lord commended marriage by His presence at the feast of Cana. However, though marriage is good and honourable, virginity is better, more meritorious, and more pleasing to God, a doctrine clearly confirmed by the example of our Lord and of His Virgin Mother<sup>1</sup> explicitly taught by S. Paul, by universal tradition in the Church, and by the condemnation of the contrary by the Council of Trent.<sup>1</sup>

Though God wished the human race to persist and to be multiplied, there is no strict obligation imposed by any general law that every man and woman should marry if they can. There may be an obligation in particular cases, as when a man cannot otherwise remain continent, or has to repair the good name of a woman, which he may not be able to do without marriage. Since the inclination of men and women to enter the married state is so persistent and so ineradicable, the multiplication of the race will be secure. Though life and existence are very great goods, and to exist is better than not to exist, it is not a fact that

<sup>1</sup> Cone. Trid., s. 24, c. 10.

every individual of the human species is under the obligation of transmitting life, for there are innumerable morally good occupations that are incompatible with marriage, and the difficulties of finding a suitable partner are sometimes so great, and indeed often insuperable, that the obligation to marry cannot be proved. It is superfluous to speak of the physiological need of sexual intercourse, since it does not exist in many men and women ; or of the invincible tendency in man to sexual intercourse, since this has to be forgone in many circumstances of life ; or of the harm that celibacy does, for the harm is non-existent in the unmarried. Nor need we regard the alleged perfection in man and especially in woman, which, it is said, only the married state is capable of evoking. All such considerations are extrinsic and accidental, and their force, where they have any, has no bearing on the matter in its general aspect, namely, on the universal obligation to marry.

Some modern authors have so emphasised the individual as opposed to the racial aspect of marriage, as to deny that procreation and education of offspring is its primary purpose. They assert that the secondary purposes of marriage are not essentially subordinate to its primary purpose, but are equally primary, and are independent of it. This opinion has been condemned by the Holy Office (April i, 1944).



## CHAPTER II

### THE KINDS OF MARRIAGE (c. 1015)

A valid marriage between those who are not baptized is called, in the canons, a legitimate marriage. The Church does not legislate for such, but must at times pronounce on its validity. Such a marriage is null if contrary to Natural or to divine positive law. If it is contrary to Civil law, it is not necessarily null, for this depends on the possibility and the will of the State to constitute annulling impediments, a matter that will be treated later.

2. In the case of the baptized, to whom alone the following sections apply, a valid marriage is one that is not contrary to Natural or to divine positive law, or to the annulling law of the Church.

( ) It is merely a ratified marriage, if it has not been consummated.

( ) It is ratified and consummated, if true and complete sexual intercourse has taken place, such as would render the parties one flesh.<sup>1</sup> Consummation, in the opinion commonly held today, has no implication that the male element is prolific—though it must be derived from the testicles—nor that the female element can be in fact fertilized, or that it is produced at all. Consequently, true consummation can take place though ovariectomy, or fallectomy, or hysterectomy, has been performed on the woman ; it cannot take place if the male has been castrated or permanently and doubly vasectomized. It is not necessary for consummation that any female secretion (ovarian, uterine, or vaginal) should take place. It is by true and complete consum-

<sup>1</sup> A husband, under the influence of aphrodisiacs, consummates marriage even if, during intercourse, he has not the use of his reason; S.O., Feb. 2, 1949.

## KINDS OF MARRIAGE

59

mation as stated that the two persons become one flesh. Certainly, no ovulation is required on the part of the woman, since ovulation takes place at definite periods, not necessarily during intercourse, and in the aged does not take place at all ; nor is impregnation or the possibility of it necessary, since consummation can take place during actual pregnancy when the *os uteri* is closed. It will be unnecessary to go into any lengthy discussion of this matter. There is, confessedly, a difference of opinion. The common opinion is here adopted, and it appears to be most in harmony with the decisions of Roman Congregations, of which mention will be made later. Consummation does not take place if onanism is practised, whether by withdrawal, or the employment by the husband of contraceptives, nor if that species of artificial fecundation is resorted to, whereby the male element is first extruded, outside actual intercourse, and is then artificially introduced into the *vas mulieris*. Even should offspring result from the latter procedure the marriage has not been consummated. The presence of a fetus and the birth of a child are not, therefore, peremptory proofs of consummation.<sup>1</sup> Consummation is an external fact and must be capable of being externally known and juridically proved ; it therefore excludes all reference to actual impregnation or even presence of an ovule, for these are unascertainable facts until long after consummation. Consummation is presumed to have taken place after marriage, if the parties have cohabited together. This presumption may, however, be rebutted by contrary evidence.

3. Marriage is true and lawful if no impediment existed between the parties ; it is true but unlawful if only a prohibiting, but not an annulling, impediment existed between the parties.

4. Marriage is invalid if one or both of the parties were incapable of contracting that marriage in consequence of an existing annulling impediment, or in default of true consent, or in the absence of the legitimate canonical form imposed by church law for the celebration of marriage,

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<sup>1</sup> cf. case cited by Cappello, III, n. 381, and decided by S. R. Rota, 1920.



unless, in the latter case, dispensation is given either by law itself or by competent authority.

5. A marriage is attempted when one or both of the parties, conscious of an existing annulling impediment, have gone through the external form of a matrimonial contract.

6. A marriage is putative when it is invalid owing to the existence of an annulling impediment between the parties, which is unknown to both or at least to one of the parties, who, therefore, contracted the marriage in good faith and in the legitimate canonical form *in facie Ecclesiae*. This condition of celebration in legitimate canonical form used to be disputed by some writers of eminence. The point has been settled by a reply of the Commission for the Interpretation of the Code, Jan. 26, 1949, that for a marriage to be putative it must be celebrated *coram Ecclesia*.<sup>\*</sup> Marriage remains putative so long as at least one party is in good faith. When both parties become certainly apprised of its nullity, it ceases to be putative and becomes null in conscience as it had always been in fact. Children born of a putative marriage are legitimate.<sup>2</sup>

7. Marriage is canonical if it fulfils all conditions required by divine and Ecclesiastical law ; it is civil, if entered upon in presence of the state official and in accordance with Civil law.

8. Marriage is public, if celebrated publicly, as the Church prescribes and after banns have been published, unless they were dispensed. Marriage is occult if the banns were not published and if it was celebrated privately in the presence of parish priest (or delegate) and witnesses. Marriage is occult and at the same time a marriage of conscience if the strictest secrecy concerning it has to be kept.

9. A clandestine marriage, as it was called, was not a marriage at all, but had the appearance of one, and was invalid owing to non-observance of the Tridentine form. The term is not now used.

<sup>1</sup> AAS., XLI, p. 158.

<sup>\*</sup> That a marriage may be putative, it must be celebrated canonically; cf. P.C.C.J., Jan. 26, 1949. This reply sets at rest all former controversy.



io. A morganatic marriage is a valid marriage, but one in which the wife is of an inferior social status ; it is contracted on the condition that wife and children are excluded from all paternal titles and dignities, and enjoy only such advantages as were granted to them from the inception of the contract. It is also called Salic and *sinistra manus*.

## CHAPTER III

### THE ESSENTIAL PROPERTIES OF MARRIAGE (c. 1013)

#### SECTION 1. The Unity of Marriage

The essential properties of marriage are its unity or exclusiveness and its indissolubility, which acquire in a Christian marriage particular fixity in virtue of its sacramental nature.

The unity of marriage is due to the fact that it is an exclusive contract between one man and one woman, each having marital rights and duties in respect of the other alone, to the absolute exclusion of all other persons. This property excludes polygamy and polyandry.

2. Polyandry, viz., simultaneous mutual marital rights between one woman and several men is contrary to the primary precepts of Natural law, because it positively and by its very character excludes every purpose of marriage. It is contrary to the primary purpose of marriage, viz., procreation and education of offspring, for the woman in polyandry is usually infertile—no account being taken of exceptional cases—and the offspring has usually to shift for itself. It is contrary to the secondary purposes of marriage, viz., mutual help and comfort and the moderating and allaying of concupiscence, for polyandry leads to domestic strife and promiscuous fornication, and must do so in the nature of things.

3. Polygamy, viz., the possession and use of several wives by one husband is not contrary to the primary precepts of Natural law, for the practice was permitted by God in the Old Dispensation (Gen. 4, 19) ; the primary purpose of marriage can be secured in polygamy, though the secondary purposes cannot be readily secured. Consequently polygamy is said to be contrary to the secondary precepts of Natural law, in that it would render married life difficult and precarious.<sup>1</sup>

<sup>1</sup> S. Th., Suppl., q. 65, a. 1. In regard to polygamy, one may hold with many divines that God gave a dispensation for it to the primitive Jews ; or with others, that apparent exceptions to the Natural law were really the

It is certain that God instituted marriage to be the lifelong union of one man with one woman ; it is also certain that God tolerated polygamy and rendered it permissible at least amongst the Jews. Christ our Lord explicitly recalled marriage to its original unity, so that thereafter polygamy and even bigamy were forbidden to all mankind by divine positive law. It is certain that polygamy was forbidden by the precept of Christ to pagans also, a fact that is proved by numerous decisions of the Church.<sup>1</sup>

SECTION 2. The Indissolubility of Marriage

The second essential property of marriage is its indissolubility whilst both parties to it are alive. It is intrinsically indissoluble in the sense that the parties cannot dissolve the bond, and this stability is derived from Natural law itself, so that the marriage of pagans is intrinsically indissoluble. Even in the case of a marriage, pagan or not, that is absolutely sterile, and one in which the primary purpose, procreation, cannot be realized, the bond is by nature indissoluble, for the common good of the race demands that there should be no exception whatever to an ordinance of nature that is designed to secure the good of offspring.<sup>2</sup> Since, then, marriage is by nature indissoluble, no human authority is competent to deal with the bond of marriage and every State is bound to uphold its indissolubility, both because this is a postulate of Natural law, and because indissoluble marriage is the fruitful source of individual benefit and public welfare.<sup>3</sup> Marriage would be said to be extrinsically indissoluble if no authority whatever could dissolve the bond. But this is not so, for God Himself could dissolve the bond, and Christ has left to His Church the power of

withdrawal of certain classes of cases from the Law. God's Providence could preserve the order of nature in spite of these exceptional cases (Lehm., II, n. 918).

<sup>1</sup> cf. Cappello, III, n. 43.

<sup>2</sup> S. Th., Suppl., q. 67, a. 1, ad 4 ; S., 2. 2, q. 154, a. 2 ; c. Gent., III, n. 123. Pope Pius IX, *Syllabus* (pr. 67), condemned the proposition that marriage is not indissoluble by the law of nature.

<sup>3</sup> cf. Pope Leo XIII, Encycl. *Arcanum*, 1880, for an exposition of the whole doctrine of marriage, and Pope Pius XI, Encycl. *Casti Connubii*, 1930.



doing so within clearly defined limits, which the Church itself can best understand and interpret. It is now commonly held that, in the Old Dispensation, God did, as a fact, allow the Jews to give a bill of divorce and thus to dissolve the bond, and it is quite certain that the Church can dissolve the bond of marriage of the faithful if the marriage has not been consummated, and of infidels on the conversion of one of the parties, or of both, even though marriage had been consummated in infidelity, if it had not been consummated after their baptism.

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## CHAPTER IV

### THE CONTRACT OF CHRISTIAN MARRIAGE A SACRAMENT (c. 1012)

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#### SECTION 1. Marriage a Contract

Marriage is a bilateral contract begetting mutual obligations of justice. The parties to the contract are only husband and wife ; the obligation in justice regards the parties separately and conjointly, namely, each is bound to give the right to marital dues to the other exclusively, and both are bound to mutual fidelity. But marriage is not a contract like that of buying and selling. It has a peculiar sanctity, in that its author is God, its purpose is to procreate and educate offspring, not for the State only but for the sonship of God, for the worship of God in the true Church, and for a destiny of eternal happiness. It symbolizes that union of God by grace with the souls of the just, and when consummated, the union of God in the Incarnation with His Church : “ It was from the beginning a kind of adumbration of the Incarnation of His Son.”<sup>1</sup> Furthermore, marriage is a natural contract founded in nature for the good of the human race ; it cannot subsist except between two only, male and female ; it must be entered upon by the contracting parties personally, or by proxy at the express wish of the parties to be married ; it ever gives rise to mutual rights and obligations, which no human power can abrogate, and, as stated, it is intrinsically a permanent contract till death, nor can the contracting parties agree to dissolve it. It is, therefore, a contract *sui generis*.

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#### SECTION 2. Christian Marriage a Sacrament

##### 1. A True Sacrament

Marriage of the baptized is a Sacrament in the strictest sense, in that it is an outward efficacious sign of inward grace, instituted by Christ, Who elevated the matrimonial

<sup>1</sup> Pope Leo XIII, *Arcanum*.

contract between the baptized to the dignity of a Sacrament. That marriage is a Sacrament like the other Sacraments has always been the teaching of the Church. That the contract is the Sacrament and is identical with it was not always admitted by theologians, but now no distinction can be admitted.<sup>1</sup> Marriage by proxy is a Sacrament, and a marriage contracted between two pagans becomes a Sacrament when they are both baptized. The Sacrament is the contract at the moment the contract is made. The married state, or marriage *in facto esse*, is not the Sacrament ; the bond is the *res et Sacramentum*. Valid marriage between one baptized and a pagan is not sacramental.

## 2. Matter and Form

The remote matter of this Sacrament is the right over the body of another for the purpose of true sexual intercourse; the proximate matter is the actual transference of that right by words or signs ; the form is the acceptance of that right. The transference of the right and the acceptance of it, together with the intention of the parties constitute the Sacrament for they constitute the contract.

## 3. Minister

The parties marrying are the only ministers of the Sacrament ; each administers and receives the Sacrament. This necessarily follows from the fact that the contract is the Sacrament. Consequently, those who contract marriage are the ministers, whether they are aware of it or not, even if heretics, who do not think that marriage is a Sacrament at all. Positively and unconditionally to exclude in intention the Sacrament from the contract would exclude the contract, and there could be no true marriage in such a case. To receive the Sacrament of Marriage in conscious mortal sin would be a grave sacrilege ; to administer the Sacrament in mortal sin is probably not a grave sin, for the parties are not specially consecrated by the Church for that purpose ; to administer the Sacrament to the other party who is

<sup>1</sup> Pope Pius IX, *Syllabus*, pr. 73 ; Pope Leo XIII, *Arcanum*.



known to be receiving it sacrilegiously is material co-operation in the sin of another, and will usually be excused since such co-operation cannot be avoided.

### SECTION 3. The Favour of Law

Marriage is said to enjoy the favour of the law (c. 1014), that is, a marriage once celebrated is treated as valid until its invalidity is clearly established. In cases of doubt, therefore, the validity is upheld. This is true of the marriages both of the faithful and of infidels. There is one exception. In cases of doubt concerning marriage in infidelity, the privilege of the faith enjoys the favour of law. For example, when an infidel partner becomes converted to Christianity, if his or her marriage in infidelity is of doubtful validity, it is assumed by law to have been certainly invalid, when the case arises of his or her wish to contract a marriage with a Christian.

When a marriage has been contracted in positive and insoluble doubt as to its validity, it is not to be declared invalid, provided that the case was settled in accordance with the ordinary process of law.<sup>1</sup>

<sup>1</sup> P.C.C.J., June 26, 1947.

## CHAPTER V

### THE PURPOSES AND BENEFITS OF MARRIAGE (c. 1013)

#### SECTION 1. The Purposes of Marriage

The primary and essential purpose of all marriage, intended by God, is the procreation and upbringing of offspring. This is an obvious postulate of nature, for man has this ineradicable tendency ; it is the intention of God, for He bade man and woman to increase and multiply (Gen. 1, 28). Since education, intellectual, religious, moral and physical, is essential to the perfection and fitting progress of the human race, the education of offspring is a primary purpose of marriage. No other primary purpose than procreation and the rearing and education of offspring can be rationally maintained.<sup>1</sup> This primary purpose is not the procreation of children anyhow, for this is mere animal procreation, but it is such procreation and education as shall guarantee the perfection of the human being, and as the perfection of man's actions consists in his tendency to the ultimate end of all human life, namely, God, the purpose of marriage is to procreate and educate offspring for the worship and service of God. This is due to nature itself, and is imposed by Natural law, for Natural law commands man to work out his ultimate perfection. It is, therefore, absurd to think that the purpose of marriage is in any true sense the sexual self-expression of man and woman, or the complementing, through sexual intercourse, of the incomplete sexuality of man and woman viewed separately. It is true that man and woman are sexual complements, but human perfection is found in the unmarried ; there is nothing lacking in respect of complete human perfection in the individual, male or female.<sup>2</sup>

The secondary and also essential purposes of marriage are the mutual help that husband and wife can give in their

<sup>1</sup> These secondary purposes are subordinate to the primary (S.O., April 1, 1944).  
\*cf. Cappello, III, n. 8, note (19).

## MARRIAGE AND ITS BENEFITS 69

united care of the family, in mutual love and upbringing of offspring, and the allaying of or lawful outlet for concupiscence, since concupiscence is, as a fact, normally satisfied in marriage, and without marriage the gratification and satisfaction of sexual concupiscence would be sinful : “ Then, to the unmarried and widows I say, it is good for them if they remain even as I. But if they have not self-control, let them marry ; it is better to marry than to be on fire (with passion) ” (1 Cor. 7, 8-9). After the sin of our first parents, marriage, which before had been a duty of mankind for the preservation of the race, was ordained to the allaying of concupiscence that sin might be avoided. Consequently, this partial secondary purpose of marriage is due to the fact of original sin.

Since marriage is a lawful state of life, it may be entered upon to achieve either purpose, namely, the procreation and upbringing of offspring, or the allaying of concupiscence, provided that the right to intercourse is not positively excluded by either party. When generation is not at all likely, owing to advanced age, marriage may be entered upon for the sake of its secondary purposes, and marital intercourse is then lawful. So, too, with the same limitations, it can be entered upon for good or indifferent reasons extrinsic to it, such as the reconciliation of the families of the parties or of their relatives, since such reasons, do not, as is supposed, exclude any of the essential purposes of marriage. But to enter upon marriage for sinful purposes would be sinful ; if the purposes were contrary to the primary essential purpose of marriage, it would be an invalid marriage, since an agreement cannot be a good contract at all, if the former excludes the very essence of the latter.

### SECTION 2. Marriage and its Specific and Substantial Benefits<sup>1</sup>

If we consider Christian marriage, as we do throughout this treatise, its specific benefits are offspring, conjugal fidelity and the Sacrament (*bonum prolis, fidei, Sacramenti*).

<sup>1</sup> cf. the Encyclical letter, *Casti Connubii*, of Pope Pius XI, Dec., 1930, from which most of what follows in this section is taken.



MARRIAGE

1. Offspring

Offspring is the greatest benefit of marriage, for man, raised to the supernatural order, is endowed by God with the power of co-operating with the creative act of God, and thus of peopling the earth with beings to worship Him, to know, love and serve Him, and finally to enjoy Him for ever in heaven. This gift of divine goodness is the fruit of marriage, and therefore the institution of marriage by God with such a purpose in view as that mentioned above is one of the conspicuous gifts of Divine Love. But it could not be God's intention, and we know from Revelation that it is not His intention, that the race should be multiplied anyhow. Children must be educated to worship God as He wishes to be worshipped, to become members of the Church of Christ, fellow-citizens of heaven, members of God's household, partakers of immortal life, heirs of eternal glory. Parents have, therefore, the obligation of seeing that their children do become members of the Church through the Sacrament of Baptism, and that they grow up as devoted members of the Church, sanctifying themselves by the use of the Sacraments and aiming at Christian perfection. It is obvious, then, that children are committed to their parents by God to be restored to God with interest on the day of reckoning. If they are employed merely for the advantage of parents or of the State, they will have missed the main purpose of their existence. Religious and moral education are of primary importance, but God would have failed to provide for children, and therefore for the fitting development of the race, if He had not given parents the power and the right to educate them in many other ways. Parents, therefore, have the first right to rear, maintain, and educate their children, and this right cannot be effectively exercised, unless men and women are indissolubly bound in marriage, for only then is parental care always at hand.

The benefit of offspring, is, therefore, summed up by saying that the primary end of marriage is the procreation and the education of children (c. 1013, 1).

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## 2. Conjugal Fidelity

The second benefit of marriage is that of conjugal fidelity. The essence of this benefit consists in the positive fulfilment of the contract and, negatively, in the denial to a third party of any marital relations, such as cohabitation and actual intercourse. The benefit must also exclude everything that is contrary to the rights and laws of God and entirely opposed to conjugal fidelity. It must be clear that such a benefit safeguards both the contract and the home, and is calculated to bring in its train immense blessings, happiness and joy in married life. The benefit safeguards the rights of both partners, and cuts at the root of all improper familiarity and affection outside the home.

When we inquire what precisely is demanded by this conjugal fidelity, we see that there are imperatively demanded perfect unity of marriage, to which polygamy and polyandry are opposed, absence of wilful thought and desire contrary to conjugal fidelity, conjugal chastity, so that man and wife love one another with a pure and holy love as Christ loves the Church. Here again, the conjugal fidelity that expresses itself in love must include mutual help, both in ordinary domestic relations, and in the promotion and perfection of the interior spiritual life, the mutual rendering of marriage dues, the maintenance of genuine domestic society, in which the husband is the head and the wife the subject : “ Wives be subject to your husbands as to the Lord, because the husband is the head of the wife, as Christ too is the head of the Church ” (Ephes. 5, 22). But it must be observed that the husband may not, therefore, treat his wife as a chattel or a servant, for the wife is entitled to all rights that belong to her dignity as a human person, wife, mother, and companion. Her obedience must be dignified and honourable ; this will be so, only where mutual love and forbearance reign.

Consequently, the benefits of conjugal fidelity are unity, chastity, charity, and honourable obedience, which certainly preserve and foster the peace, dignity, and happiness of marriage. It will be obvious, then, that the unhappiness

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## MARRIAGE

of many marriages arises precisely from want of co-operation with God's designs when He wishes to bestow on every Christian marriage these extraordinary benefits.

### 3. The Sacrament

The third and crowning benefit of Christian marriage is that of the Sacrament, which includes two elements, namely, the hallowing of the contract, and the indissolubility of the bond. By the hallowing of the contract is meant the bestowal of the sanctifying grace of the Sacrament, and the right to actual graces to lead an honourably chaste and happy married life and to bring up offspring in the fear and love of God. The indissolubility of marriage, far from being an onerous tie, as modern paganism asserts, is an immensely important benefit, especially for the wife, and for the progress of human society. This indissolubility is a benefit that belongs to every marriage : “ What God hath joined together let no man put asunder.” No human authority, even in the Old Dispensation, could dissolve the marriage bond. Though God permitted divorce under certain circumstances to the Jewish people, Christ our Lord restored marriage to its pristine indissolubility for all mankind. Furthermore, though marriage between unbaptized persons can sometimes be dissolved, as may also marriages not consummated between baptized persons, this power is not a human power but is derived immediately from divine law, of which the Church of Christ is the only interpreter.

The Encyclical letter, *Casti Connubii*, already referred to, expresses the benefit of the Sacrament in the following terms. The benefits that issue from indissolubility affect parents, offspring and human society. Husband and wife possess a positive guarantee of the endurance of the marriage bond, a very necessary guarantee for those who mutually yield their persons and the deepest love of their hearts to one another ; they are provided with a strong bulwark of chastity against the incitements to infidelity, should they arise ; they are freed from the anxiety lest in advanced years the partner prove unfaithful ; the human dignity of man and woman is



maintained, mutual aid is assured, husband and wife are continuously reminded that they have entered upon the married state not for perishable things nor the satisfaction of passion, but that each might procure for the other high and lasting good. The benefit of indissolubility reaches, in its effects, to the training and education of offspring, for these often entail great trouble, which is best borne by the united efforts of the parents. Society also shares in the benefits of indissoluble marriage, for where the marriage bond is upheld, the happiness and well-being of individuals, families and the State are safeguarded.

But besides this firmness and indissolubility, other and higher benefits are derived from the Sacrament, for it perfects natural love, confirms the indissoluble union and sanctifies both man and wife.<sup>1</sup> Christian marriage opens a treasure of sacramental grace from which is drawn the supernatural power of fulfilling the rights and duties of married life faithfully, holily, perseveringly till death. In addition to sanctifying grace, the Sacrament bestows particular gifts, dispositions, seeds of grace, by which the natural powers are elevated and perfected. By them, the parties are assisted in understanding and knowing intimately, in adhering to firmly, in willing effectively, and in successfully putting into practice those things which pertain to the married state, its aims and duties ; giving them a right to the actual assistance of grace, whensoever it is needed for fulfilling the duties of their state of life.

<sup>1</sup> Cone. Trid., s. 24.

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## CHAPTER VI

### THE CHURCH'S JURISDICTION OVER CHRISTIAN MARRIAGE (cc. 1016, 1038-1040)

#### SECTION 1. Immediate Jurisdiction

The marriage of baptized persons is ruled not only by divine law but by Canon law also, without prejudice to the power of civil authority over the merely civil effects. Divine law comprises the Natural law and the divine positive law, both of which rule the marriages of all mankind, pagans not excepted. The Church cannot dispense in this law. The Church has, in all other respects, exclusive and independent authority over Christian marriage in respect of validity and lawfulness. This doctrine is a matter of defined Faith. To the Church alone belongs the right to safeguard the Sacraments, and therefore the marriage of the baptized, since the contract of marriage is a Sacrament. As there is no distinction, it is not possible that the State should regulate marriage as a contract, and the Church should be allowed to regulate it as a Sacrament. This power of the Church is legislative, inasmuch as it can lay down laws for valid and lawful marriage ; it is judicial, inasmuch as it can decide matrimonial cases ; it is coercive, inasmuch as it can threaten and punish those guilty of dereliction of marital duties.

But the State has rights in regard to the civil effects of marriage. The civil effects are such as bear on the temporal order, as dowry, inheritance, registration, domicile, etc., and these are separable from the contract itself. Consequently, the State may not legitimately punish a priest or married persons merely for the celebration of marriage, though it may do so for the omission of civil formalities, provided these are not contrary to the rights of the Church. Thus, that civil marriage, as a contract, should take place before canonical marriage is an unjust prescription of Civil law, and no State should impose the obligation. The

Church, however, tolerates till *force majeure*. Similarly, the State may not visit with penalties a 'marriage of conscience,' which the Church permits and insists upon in some cases. Furthermore, legitimation of offspring is an inseparable effect of a true valid marriage, and the State is morally bound to recognize such offspring. Fortunately in this country, Statute law has, for the most part, come into line with Canon law in respect of legitimation of offspring by the subsequent marriage of the parents, but registration is necessary.<sup>1</sup> Again, if offspring is canonically legitimate, the State has not the right to disinherit such offspring, or exclude them from a share in the estate of an intestate.<sup>2</sup>

## SECTION 2. Persons who exercise Jurisdiction

1. It belongs to the supreme ecclesiastical authority alone to declare when a divine law forbids or annuls marriage. This authority is vested in the Pope acting by himself, or in an Ecumenical Council with and under the Sovereign Pontiff, or through a Sacred Congregation by special mandate or specific approval.<sup>3</sup> An authoritative declaration is the authentic interpretation of divine law, Natural or positive. This same supreme authority has the exclusive power of constituting matrimonial impediments, both prohibitory and annulling, in respect of baptized persons marrying others baptized or not. Its prescriptions may be in the nature of a universal or a particular law, but they do not affect marriage between the unbaptized.

2. Local Ordinaries may legitimately, in particular cases, forbid those residing in their respective territories and their subjects anywhere, to marry, but as a temporary provision only, and for a reason that is just and only whilst the reason persists. An invalidating clause cannot be added to such prohibition except by the Apostolic See. The prohibition manifestly binds under grave sin. Thus, a bishop might forbid the celebration of particular marriages owing to scandal, grave enmities, public peace, probable

<sup>1</sup> cf. Legitimacy Act, 1926 (16, 17 George V, c. 60).

•Cappello, III, n. 73.

<sup>3</sup> Cappello, III, n. 62 ; Gasparri, I, n. 226.



## MARRIAGE

existence of an impediment. He could also forbid marriages to be celebrated after a certain hour in the evening. According to Civil law in this country, marriages may not take place after six o'clock. Where the clergy are the civil registrars of marriages this limit has to be observed.

3. Apart from the Roman Pontiff, no one can abolish, wholly or in part, ecclesiastical matrimonial impediments, whether prohibitory or annulling, nor can anyone dispense from them unless the power has been given to him by common law or by special Apostolic indult. Customs that are calculated or tend to introduce new impediments or that are contrary to existing impediments are condemned. Custom, if it has the legal approval of the legislator, can both interpret existing laws and introduce new law.<sup>1</sup> Attempts have been made at various times to invoke custom against the impediment of mixed religion, but it has been declared to be a corruption of the law. Clandestinity, not strictly an impediment, was admitted by the Holy Office (1868) to have been abrogated in Japan, but no true impediments were abrogated, such as consanguinity, and there was no custom sanctioned in England in favour of the freedom of baptized heretics from matrimonial diriment impediments.

### SECTION 3. Persons subject to the Matrimonial Legislation of the Church

1. All baptized persons are subject to the provisions of this legislation, without exception, and therefore heretics, schismatics, and apostates are included, unless the Church expressly and in set terms exempts them. Exemption is given expressly in respect of the impediment of disparity of worship (c. 1070), and of the canonical form of celebration in clearly defined cases (c. 1099, 2).

2. The unbaptized are not directly subject to this legislation. They are indirectly so in many cases, as, for example, when the legislation is an authentic declaration of divine law, Natural or positive, when an unbaptized person marries one baptized, when one party to a pagan marriage is

converted, when a marriage between baptized and unbaptized is submitted to the Church's Courts, when a pagan wishes to marry a baptized person, or does so without the necessary dispensation, for marriage cannot be valid on one side and invalid on the other. A converted pagan is subject to matrimonial impediments that arise in his case after Baptism ; if the impediment is merely ecclesiastical, it would not have affected him before Baptism, nor would it persist after Baptism. Such merely ecclesiastical impediments are public propriety, *crimen*, spiritual relationship, affinity. Consequently, converts to the Faith, who whilst pagans, contracted marriages within forbidden degrees in which the Church is accustomed to grant dispensations were not affected.<sup>1</sup>

<sup>1</sup> *Epist.*, S.O.. Jan. 17, it. 72, quoted by Cappello, III, n. 67.

## CHAPTER VII

### THE POWER OF THE STATE OVER THE MARRIAGES OF THE UNBAPTIZED

It is now commonly held that the State has the power to constitute impediments in respect of the unbaptized, provided it do so by laws that are good and reasonable. The reasons given for this opinion are two.

I. Outside the Church, there exists no supreme independent authority except the State. There is need for the marriages of the unbaptized to be ruled by some external authority, since true, legitimate, and orderly marriage is essential for the well-being of mankind. The common good, therefore, social order, family peace and prosperity demand this authority. Natural law and divine positive law do, indeed, rule all marriages, but these founts of order and obligation do not, in fact, determine very exactly all concrete issues, so that even the Church undertakes in the case of the baptized to regulate marriages so that the common good may be secured. When we inquire by what intrinsic right the State can rule the marriages of unbaptized citizens it is difficult to find an answer. The most convincing appears to be that of Cavagnis, Cappello and Gasparri, namely, that since marriage is, of its nature, something sacred, having God for its author and symbolizing the union of Christ with the Church, the right to rule marriage should belong to a religious society. But such a society does not exist amongst the unbaptized outside the Church, and since it is of supreme importance that marriage should be regulated by positive law, the supreme civil power—in default of any religious power legitimately instituted—can make such laws for the common good, but only *jure devolutioo et hypothetico*, i.e., by devolution, for the right should strictly belong to a religious authority, and in its default, the power passes to the civil authority ; and hypothetically, that is, on the supposition that an inde-



pendent religious society does not exist for the unbaptized.<sup>1</sup>

2. Several replies and instructions given to Missionaries by the Roman Congregations make it abundantly clear that they were of opinion that such authority existed in the State. One reply may suffice. The Sacred Congregation for the Propagation of the Faith (Dec. 5, 1631) stated: "Polygamous Hindus, who, with their several wives, are converted to the Faith and baptized, must dismiss all their wives except the first one, who alone is a true wife, provided that no impediment of Natural law nor of positive law promulgated by their Prince intervened to make the marriage invalid." But the civil impediments must be reasonable, possible of observance, useful, and morally blameless, for otherwise they could have no force.

<sup>1</sup> Cappello, III, n. 78 ; Gaspard, I, n. 255.

## CHAPTER VIII

### BETROTHAL (c. 1017)

#### SECTION 1. Definitions

The act of betrothal, regarded as a form of agreement, a contract and a promise, is a mutual promise of future valid and lawful marriage, or more fully, it is a sincere, mutual, deliberate and free promise, made in legal form, that is, in writing, by two definite persons legally capable of marriage, to marry one another validly and lawfully at some future time. The promise begets an obligation of fidelity. Fictitious promises do not, of themselves, bind the conscience, but they would be upheld in the external forum until they were proved to have been fictitious. If such fictitious promises by one party do prejudice to the other, reparation must be made, and if it can be made only by marriage justice demands marriage.

Betrothal is a bilateral onerous contract, since each party promises something in view of the promise of the other. The obligation of future marriage being a grave matter, betrothal must be deliberate and free, made with full knowledge and full consent, i.e., such knowledge and consent as are required to undertake any most serious obligation, and with the knowledge of what marriage means and entails, at least in general.

Betrothal can take place only between such as are capable of marrying, validly and licitly, since no promise can bind one to commit sin, but the legal capacity to marry may be in the future. Thus, a boy of fifteen years of age is not canonically capable of marriage, but he can promise to marry when he shall have reached the canonical age. An agreement to marry one already married is null and void, if it is meant to repudiate an existing bond. If parents reasonably object to their children contracting a particular marriage, the children cannot make a valid betrothal. Agreement to marry a non-Catholic is void ; so, too, agree-

ment to marry one who is excommunicated and who does not intend to get absolution.

## SECTION 2. Betrothal with an Impediment

When betrothal is made between persons who require a dispensation to marry such as the Church can give and usually gives, it is a matter of controversy whether or not the betrothal is valid. The best view appears to be that the Church makes the parties capable of valid and lawful betrothal only on the condition that, after the dispensation has been granted, a new consent to the betrothal is given. The declaration of the Sacred Congregation of the Council appears to establish this view.<sup>1</sup>

## SECTION 3. Age for Betrothal

The age of discretion, that is, approximately seven years, is sufficient most probably, for valid and lawful betrothal. This was commonly admitted under former legislation. The new legislation has made no change though it appears to some authors<sup>2</sup> to do so in view of canon 1023, which prescribes publication of banns, at the option of the local Ordinary, in places where the persons intending to marry have resided for six months after puberty. The canon appears to imply that there could be no valid betrothal before puberty, because it pays no regard to a canonical impediment before that age.

## SECTION 4. Persons who cannot enter into Betrothal

Those cannot be betrothed who are naturally incapable of discretion or who are not free. These categories include lunatics, idiots and defectives, who cannot sin grievously for lack of discretion, the perfectly intoxicated, those who labour under a perpetual annulling impediment to marry that is never or rarely dispensed by the Holy See, and probably those to whom a dispensation could be given. If

<sup>1</sup> Oct. 2, 1857 : cited in Cappello, III, n. 84.

<sup>2</sup> e.g., Cappello, III, n. 85 ; *contra* Wernz-Vidal, V, n. 83.



the impediment is temporary' only and can be removed by the parties themselves or by lapse of time, a promise to marry when the impediment has disappeared would be valid.

#### SECTION 5. The Juridical Form of Betrothal

Three conditions are necessary that betrothal may be made in due canonical form. These are :

1. The promise must be in writing, that is, at least some written sign in the document must be made by the parties.
2. The date, day, month and year, must be indicated in the document but the day or month may be equivalently indicated.
3. The document must be simultaneously attested by signature at the foot thereof, by the persons betrothed and by either the parish priest of the place, or the local Ordinary of the place, or two witnesses ; if either or both of the parties do not know how to write or cannot write, the fact must be stated in the document, and a third witness added, who shall sign the document with either the parish priest, or the Ordinary, or in presence of the other witnesses (the party or parties incapable of writing making no mark at all). Though the document may be printed or typewritten, the necessary signatures or signs must be written. The witnesses may be male or female and of any age from the age of discretion, but non-Catholics should not be admitted as witnesses without the leave of the Ordinary. Neither the parish priest nor the local Ordinary can delegate their competency to others. Betrothal can be entered upon by proxy but not by letter. The term local Ordinary includes, besides the Sovereign Pontiff, a residential bishop, abbot or prelate *nullius*, vicar general, Administrator, Vicar or Prefect Apostolic, and in their default, any who *de jure* or constitutionally succeed to their administration (c. 198). The term parish priest includes all who can act as parish priests (cc. 216, 451, 464, 465, 471, 472, 474, 475), and putative parish priest (c. 209).<sup>1</sup>

<sup>1</sup> Cappello, III, n. 92; Gasparri, II n. 936.

## SECTION 6. Error in Betrothal

Mistake will invalidate betrothal if it is a substantial one, i.e., one regarding the person or equivalently so; it will not invalidate betrothal if the mistake is accidental, unless it is a mistake of one party in respect of the servile condition of the other, or in respect of a condition *sine qua non*. But an accidental mistake that gave rise to the contract and is a serious one renders betrothal voidable.

Absolute duress obviously invalidates a betrothal, as also does fear that overcomes reason. If fear leaves reason intact, then even grave fear arising from intrinsic causes or justly induced by some external agent, not, however, to extort consent, does not invalidate betrothal. Unjust grave fear induced by an external agent to extort the promise probably does invalidate betrothal. Slight fear induced by an external agent, that was the cause of the contract being made renders it voidable.

## SECTION 7. Conditional Betrothal

If the condition regards the present, betrothal is valid if the condition is verified ; otherwise it is not. If the condition regards a future impossibility, the betrothal is null ; if it regards a future contingency that is morally good, betrothal is suspended until the condition is verified ; meantime, the parties are bound to await the fulfilment of the condition ; if the condition is impeded by one party, the betrothal is still suspended. If the condition regards a future immoral act, the betrothal is not binding ; if the immoral condition has been verified, betrothal is most probably not binding.

An oath added to the promise adds an obligation of religion to that of justice, but being accessory, it does not bind if the promise ceases to bind. A penalty agreed upon if marriage does not succeed betrothal probably need not be undergone, but presents given during betrothal are considered to have been absolutely given, unless the contrary is clear.



## MARRIAGE

### SECTION 8. Effects of Betrothal

Betrothal made in juridical form begets the obligation of marriage at the due time, and if the time is not fixed, when either party reasonably urges fulfilment. This is an obligation of commutative justice, and grave, and concerns the conscience only, that is, it is not a juridical obligation, for no action lies in the Church Courts to enforce marriage. No action lies in regard to the reason for breaking off an engagement ; no action for damages will suspend marriage with a third party.<sup>1</sup> Voiding a valid betrothal without good reason is a grievous sin, and entails compensation for damage if any has arisen. Betrothal that is not made in juridical form begets no obligation in either forum.

2. Betrothal begets an obligation at least of fidelity in both parties of avoiding all sexual familiarities with a third person ; such sins would obviously be against chastity, but not specifically different from unchastity in those not betrothed. It is not a more serious sin in the woman than in the man. It is probably not against justice, since neither party has acquired rights over the body of the other.<sup>2</sup>

3. If betrothal is canonically valid it will invalidate betrothal with a third person. It also renders marriage with a third person unlawful and sinful, but not void.

Note on the Obligation of Betrothal

Though betrothal has been entered into in due canonical form, and is, therefore, it would seem, a promise that binds in conscience and is accepted and endorsed in the *forum externum*, nevertheless, the Church (c. 1017, 3) will not insist on the marriage, not even when the betrothal has been broken off without any reason. Authors are at pains to explain how the Church recognizes a grave obligation arising from canonical betrothal, but does not urge its fulfilment in the external forum by means of marriage, when it would appear that it ought to urge the parties not to sin grievously. The further difficulty is raised that if one party refuses to stand by a valid betrothal, a parish priest must

<sup>1</sup> P.C.C.J., June 3, 1918. Though the Code of Canon law is not retroactive, an exception is made in favour of an action for damages for breach of betrothal.

<sup>2</sup> S. Alph., lib. 6, n. 847.



admit that the party is free to marry a third person, for the Church will not insist on the marriage between the original betrothed. It is possible to reconcile the apparent contradiction by holding that the obligation that arises juridically from betrothal is either to celebrate the marriage, or to compensate any damage sustained by refusal to marry, or in other words, the Church does not recognize a specific and determinate obligation to marry on the part of two persons betrothed.<sup>1</sup>

## SECTION 9. The Dissolution of Betrothal

1. Unlike marriage, betrothal can be rescinded by mutual consent, even if it was sanctioned by oath, since an oath is accessory to the promise (c. 1318).

2. Betrothal is dissolved when a contrary condition, mutually agreed upon, is verified, as when future disinheritance has been agreed upon as such a condition. It is also dissolved by either party entering the religious state, or the clerical state, or by a private vow of perfect chastity, of celibacy, of taking Sacred Orders, or of entering the religious state. If a more perfect state of life adopted is only temporary, the obligation arising from betrothal, according to a very common opinion, revives, when that state of life has been abandoned; but since one who enters the religious state, though the vows may be only temporary, intends to persevere in that state, it is very probable that betrothal in such cases is dissolved. Even the first tonsure, and still more, minor Orders, dissolve betrothal, as also entrance into an ecclesiastical seminary with a view to subsequent ordination.

3. One who has committed the grievous sin of sexual intercourse with his betrothed on the understanding that marriage would take place, or who has induced her to sin,

<sup>1</sup> cf. Wernz-Vidal, V, n. 96, note 102. Cappello's reconciliation (III, 109) is that there is an obligation in conscience without any sanction in the external forum. Gasparri, I, n. 101, thinks that the Church, by refusing to insist on the marriage has indirectly freed the offending party, who has broken off the engagement, from all grave obligation in commutative justice, so far as marriage is concerned. But there is left a light obligation of fidelity. Damage must, of course, be compensated, if any ensued.

is bound to marry' his betrothed, if marriage is the only reparation. If such wickedness was committed by a man who had taken a vow of chastity without the knowledge of the other party', he is bound to marry her if marriage is the only reparation, after obtaining a dispensation from his vow.

4.If an impediment supervenes on betrothal, and is perpetual and cannot be dispensed, or is one which the Church does not dispense, the betrothal lapses. If the impediment is perpetual but can be dispensed, in the one case, namely, when it was culpably induced by one party, that party is obliged to seek a dispensation from betrothal, or accept its rescission if offered by the other party. If the impediment is temporary', and not culpably' due to either party, betrothal is suspended ; if culpably due to both parties, betrothal is dissolved ; if culpably due to one party only, the culpable party is obliged to keep faith when the impediment lapses.

5.If one party' to a betrothal marries a third party, the former betrothal most probably lapses, since a state of life has been assumed, which is, of its nature, irrevocable. Violation of fidelity gives an innocent party the right to rescind betrothal. This is most usually the case when one party unreasonably puts off the marriage. Probably a delay of six months is unreasonable. The departure of one party to another distant domicile, without the will of the betrothed, is a reason for voiding betrothal.

6.A notable change in circumstances supervening on betrothal dissolves it, if it is of such a nature that betrothal would not have been entered upon in such circumstances. Thus, if one party is found to be impossible to live with, or has contracted a serious disease or deformity, or has become destitute, or has incurred heavy debts, or if marriage would cause serious family troubles, or would be unhappy, or if parents reasonably object to the marriage, the betrothal ceases to bind.

#### SECTION 10. Disclosure of Hidden Defects

If one party labours under a serious hidden defect that would render a marriage harmful or intolerable, that defect



must be disclosed. If the defect is not harmful, but would render marriage less desirable, it need not be disclosed, but charity would oblige disclosure if the marriage were likely to be unhappy or lead to bickerings. If the fiancée has been guilty of sexual intercourse with a third person, but is not nor is likely to be pregnant, nor likely to be convicted of the sin, the fact need not be disclosed, if by disclosure she would suffer in the good esteem of her betrothed or would have to remain unmarried.

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#### Pastoral Notes

1. The pastor cannot speak at length in public on the moral principles that should guide the conduct of the betrothed, but he can exhort his youthful penitents to practise the highest ideals of modesty and chastity, both for the sake of avoiding grave sin, and of winning from God the favour of a happy marriage. The lack of modesty in the betrothed means the loss both of self-respect and of mutual esteem. The youth will best preserve his soul unsullied by checking the beginnings of sinful sensuality. The maid will preserve her modesty and bring it to her marriage untarnished by even the slightest stain, if she allows no unbecoming familiarities. The doctrine is a hard one for the young, but the young can be the first to understand how precious a gift to bring to marriage is modesty preserved, and how the love that is purchased only at the cost of modesty besmirched is but half a gift, and is less than half, if it is won by maidenhood forfeited.

2. The teaching of the great doctors of Moral Theology on the relations of betrothed persons may be briefly expressed in a few principles :

(a) The betrothed are permitted the usual signs of friendship and love, customary amongst good people in their country. Custom varies greatly. In most countries, the engaged, and those too who are hoping to be engaged to one another, may rightly indulge in honourable kissing, embracing and conversation. These will be most likely to be as honourable as they should be if done in public ; they

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will be apt to degenerate into sensuality, if done so that they will not bear the light of publicity.

(i) The betrothed are permitted what is not permitted to the young who have no intention of marriage. Provided that what they do is honourable and seemly, the betrothed need not refrain from such acts, even if the result should be sexual motions, remiss or intense, which happen without their wishing them and to which they do not, in general, give consent. Such effects—we do not say sinful effects—of their good acts may be permitted, since there is a sufficient reason for permitting them. We say in general, for though consent to irregular sexual pleasure, outside marriage, should never be given, if it is, as a fact, given on rare occasions, those occasions cannot truly be said to create a proximate danger of consent ; it is remote only. This principle is of the greatest value to the young who are virtuous in a high degree, who wish never to commit sin, but who are distressed at the thought that the mere presence of sexual motions is necessarily always sinful. They must be exhorted not to consent to them, not to provoke them, nor to wish them, and to disregard them as something human and inevitable in their circumstances. By regular disregard of them the young will win a mastery over their inordinate appetites.

(c) Since some persons are more prone to sexual excitement than others, the former, during betrothal, should be more temperate and restrained in the expression of their affections than others not so easily moved. When venereal pleasure arises from seemly actions, as ordinary kissing and embracing, consent to it may not be given, nor may it be desired nor evoked by directly causing it, either by deed, word or thought. When it is involuntary it may be endured, and the occasions of it, if reasonably necessary, as they usually are in betrothal, need not be avoided. But if the motions are vehement and very likely to issue in their full result, a graver reason is necessary for permitting such effects.<sup>1</sup>

(</) The betrothed should not think that they are permitted all that is permitted in marriage, not even during the few

<sup>1</sup> cf. Venn., *dt Cast.*, n. 295.

days before marriage. The victory over passion can be secured normally by the maid. If, on the contrary, she permit everything, she will have run the risk, in too many cases sadly realized, of losing her husband and her virtue, for the man, having got everything that marriage could give him, will prove inconstant to his first love, and will go to his second with the glamour of romance entirely extinguished. This danger is particularly present when the maid is a Catholic and the youth a non-Catholic, for non-Catholic morality is sadly to seek in these matters. The maid should know that she is, speaking of woman generally, less moved to sexual motions than man is, and therefore should not solicit unusual modes of affection nor permit them.<sup>1</sup> But, at the same time, she is allowed to permit the customary signs of affection, for those are honourable, and if she shows herself morose she will naturally repel her betrothed.

(ñ) Though one must try to prevent the sins of others, if it is reasonably possible to do so, sin should not be suspected in others, and all honourable external acts between the betrothed may be employed. There may be a necessary amount of involuntary material co-operation in the sins of another, for co-operation is justifiable when, for a sufficient reason, it cannot be omitted.

(/) The pastor will speak to the betrothed of both extremes, namely, of sin on the one hand, and of excessive scrupulosity, as it is called, or an erroneous conscience, on the other. The pastor will never condone sin, but if he forbid what is permitted, his words will not be heeded by persons in loves he may drive them from the Sacraments, which are, practically, the only safeguard against sin during that dangerous period of life.

(^) The betrothed who frequently fall into mortal sin may be given advice such as the following : To hasten their marriage, to withhold consent to sin, to avoid the known dangerous occasions of sin, to agree not to commit sin, to aim at self-restraint, to receive the Sacraments frequently, to pray with a sincere will not to commit sin, to confess to one

<sup>1</sup> cf. Venn., *de Cast.*, n, 295.



confessor, not to many, to be frank, to follow advice given, not to adopt the easy moral (rather, the immoral) standards of the world.

#### Note on Preparation for Married Life

The following words of Pope Pius XI in his Encyclical letter, *Casti Connubii*, should be pondered by those about to marry :

“ Let, then, those who are about to enter on married life approach that state well disposed and well prepared, so that they will be able, as far as they can, to help each other in sustaining the vicissitudes of life, and yet more in attending to their eternal salvation and in forming the inner man unto the fullness of the age of Christ. It will also help them, if they behave towards their cherished offspring as God wills : that is, that the father be truly a father, and the mother truly a mother ; through their devout love and unwearying care, the home, though it suffer the want and hardship of this valley of tears, may become for the children, in its own way, a foretaste of that paradise of delight in which the Creator placed the first men of the human race. Thus will they be able to bring up their children as perfect men and perfect Christians ; they will instil into them a sound understanding of the Catholic Church, and will give them such a disposition and love for their fatherland as duty and gratitude demand.

“ Consequently, both those who are now thinking of entering upon this sacred married state, as well as those who have the charge of educating Christian youth, should, with due regard to the future, prepare that which is good, obviate that which is bad, and recall those points about which We have already spoken in Our Encyclical letter concerning education : ‘ The inclinations of the will, if they are bad, must be repressed from childhood, but such as are good must be fostered, and the mind, particularly of children, should be imbued with doctrines which begin with God, while the heart should be strengthened with the aids of divine grace, in the absence of which, no one can curb evil desires, nor can his discipline and formation be brought to complete perfection by the Church, for Christ has provided her with



heavenly doctrines and divine Sacraments, that He might make her an effectual teacher of men.\*<sup>1</sup>

“ To the proximate preparation of a good married life belongs very specially the care in choosing a partner ; on that depends in great measure whether the forthcoming marriage will be happy or not, since one may be to the other either a great help in leading a Christian life, or a great danger and hindrance. And so that they may not deplore for the rest of their lives the sorrow arising from an indiscreet marriage, those about to enter into wedlock should carefully deliberate in choosing the person with whom henceforward they must live continually ; they should, in so deliberating, keep before their minds the thought first of God and of the true religion of Christ, then of themselves, of their partner, of the children to come, as also of human and civil society, for which wedlock is a fountain head. Let them diligently pray for divine help, so that they may make their choice in accordance with Christian prudence, not indeed led by the blind and unrestrained impulse of lust, nor by any desire of riches or other base influence, but by a true and noble love and by a sincere affection for the future partner ; and then let them strive in their married life for those ends for which the state was constituted by God. Lastly, let them not omit to ask the prudent advice of their parents with regard to the partner, and let them regard this advice in no light manner, in order that by their mature knowledge and experience of human affairs they may guard against a disastrous choice, and on the threshold of matrimony may receive more abundantly the divine blessing of the fourth Commandment : ‘ Honour thy father and thy mother (which is the first commandment with a promise), that it may be well with thee and thou mayest be long-lived upon the earth.’ ”

<sup>1</sup> Encycl. *Divini illitis Magistri*, Dec. 31, 1929.

## CHAPTER IX

### PREPARATION FOR THE CELEBRATION OF MARRIAGE (cc. 1019-1034)

#### SECTION 1. Freedom to Marry

Before the celebration of a marriage there should be proof that there is no obstacle to its validity and lawfulness. This is an obligation primarily laid on the parish priest. Even when one or both parties are in danger of death, and marriage is to be celebrated, if possible, without delay, proofs of their freedom to contract marriage must be had, but if these cannot be obtained from external sources, it is sufficient to get the sworn declaration of the parties that they are baptized and labour under no matrimonial impediment.

The methods of establishing the freedom of the parties to be married are reference to their baptismal certificates, questioning the parties and persons acquainted with them, and publishing the banns. Though persons may be certainly free to marry who have been invalidly married civilly or in an heretical church and who have subsequently obtained a civil divorce, the parish priest may not, on any account, proceed to celebrate the marriages of such persons without consulting his bishop.

Both parties about to be married must have been validly baptized, unless a dispensation is given from the impediment of disparity of worship. The proof of Baptism is to be derived from the parochial baptismal register. The days are now past when these registers were carelessly kept, but it is still sometimes difficult to get a baptismal certificate. If it cannot be got, the testimony of one trustworthy witness is sufficient, or of the person in question, if baptized in adult age (c. 779). If even this is impossible, the certificate of Confirmation or First Communion is sufficient, or lastly, a sworn declaration of the party. The parish priest is bound to obtain the baptismal certificate when the parties were baptized outside his own territory (c. 1021), even



if he know for certain that they have been baptized, In this country, any form of certificate is sufficient, but the ordinary printed and stamped form is preferable, In making out the baptismal certificate, all particulars in the register should be copied, as that, v.g., the party had been married before, or had taken religious vows, if such be the case. Consequently, the baptismal certificate should not be an old one, but reference to the register brought up-to-date should be made. In cases of mixed marriages, the certificate of Baptism of the non-Catholic party should also have been obtained, if such is the custom of the country.<sup>1</sup>

## SECTION 2. The preliminary Investigation by the Parish Priest\*

The canons bid the parish priest whose right it is to assist at the marriage to inquire diligently beforehand and at an opportune time as to any obstacles to the marriage. He should do so before the banns are published. He will question the betrothed, or others, if necessary ; he will ask them where they live, and if they are living in the same house they should live apart, if possible, until the marriage is celebrated ; he will ask what age they are, whether or not they are Catholics and baptized, whether they are free to marry, are marrying of their own free will, and know the articles of Catholic Faith and the obligations and sanctity of marriage. The parish priest in question is the parish priest of the place where the parties have a domicile or quasi-domicile, or month's residence, or actual residence if of no fixed abode. If the parties live in different parishes, each parish priest must make investigations concerning his own parishioner. Usually, the guarantee of freedom to marry will be made out and signed after the banns.

The betrothed—so the canons prescribe—are to be questioned separately with prudence as to possible impediments to marriage, as to free consent (especially in the case

<sup>1</sup> Cappello, Chelodi, Gasparri, Cerato, Vlaming ; cf. Cappello, III, n. 149, ad VIII, but dispensation from *disparitas cultus* is always given *ad cautelam*.

\* Or Missionary of Emigrants for his own subjects. S.C.C., Oct. 7, 1953.



of the woman), as to their knowledge of Christian doctrine (c. 1020), unless, in respect of this last matter, the inquiry is not necessary. The ordinary' questions to ask relate to previous marriage, blood relationship, affinity, and such occult impediment as vow. Other impediments, such as impotence, crime (as a technical impediment), are usually difficult to find out. The parish priest must be guided by circumstances. The betrothed are bound to answer exactly concerning public impediments; occult impediments should be revealed to their confessor, who will apply for dispensation, if it can be obtained. Questions as to free consent are, as a rule, irrelevant, but the pastor must judge the need of them from what he knows of the woman, for want of free consent has given rise to invalid marriages. Minors must be asked if they have the consent of their parents.

The Christian doctrine that should be known comprises the chief mysteries of the Faith, the Creed in substance, the 'Our Father,' acts of Faith, Hope, Charity and Contrition, the Sacraments, the Commandments of God and of the Church, the obligation of being in the state of grace to receive the Sacrament of Marriage. It is for the local Ordinary to lay down the manner of these inquiries (c. 1020). The parties should also be reminded that, if possible and without grave inconvenience, they should receive the Sacrament of Confirmation, if not yet confirmed, before marriage (c. 1021).

### SECTION 3. The Publication of Banns.

The obligation of publishing the banns of marriage is a grave one; the omission of one of the three publications is probably not a grave sin. The banns must be published even if the parish priest know that there is no impediment to the marriage. The banns are to be omitted when one party is a Catholic and the other a non-Catholic, baptized or not, unless the local Ordinary directs that they should be published (c. 1026), and also in secretly celebrated marriages, and in marriages that are convalidated or rectified by a *sanatio in radice*. The banns may also be omitted where

marriage has to be hastened, as when there is danger of death or of possible scandal by delay ; in the latter case, the bishop should be consulted.

The banns must be published by the parish priest of the place where the parties have a domicile or quasi-domicile, and in the case of those who have no fixed domicile (*vagi*), or who have only a diocesan domicile or quasi-domicile, by the parish priest of the place where the parties are actually staying. If the parties belong to different parishes, the banns are to be published in both ; if either or both of the parties have a domicile in one parish and a quasi-domicile in another, the banns are to be published in both parishes. The banns of minors are published in the parish in which their parents or guardians reside, as well as in that in which the minor has a quasi-domicile, if such be the case.

If one or both of the parties lived in some place, other than their present domicile or quasi-domicile, for six months after puberty (14 years for male, 12 years for female), the local Ordinary must be consulted as to his wishes to have the banns published in such places, and even in the event of a briefer stay in any place, if there be any suspicion of an impediment, the parish priest must consult the local Ordinary. If any such places mentioned above are very far distant and the marriage cannot be delayed, the local Ordinary is directed to act in accordance with his prudent judgment as to proof of freedom.

The banns are to be published on three successive Sundays and holy days of obligation, in the parish church or in a chapel of ease where the congregation is relatively considerable, during the parochial Mass or other sacred functions to which the people come in goodly numbers, relatively to the size of the parish. Instead of being read out publicly, the names of the persons to be married may be posted up at the door of the parish or other church in the parish for a space of eight days, including two days on which hearing Mass is of obligation. This substitution requires the permission of the local Ordinary.

In this country the usual formula of publication—well



known to all parish priests—should be employed, though it is not of obligation, in which are mentioned Christian name and surname, also place of residence of both parties to be married. An exhortation to the people to pray for the spiritual and temporal welfare of the parties is often and laudably added. The precise number (first, second, third) of the publication is announced, and the people are reminded of their obligation to reveal any impediment that may be known to them.

For a legitimate reason the local Ordinary of the party or parties as well as any delegated priest can dispense from the banns even in another diocese. A good reason is required for dispensation from one publication, and a more serious reason for dispensation from all the publications. If there are several local Ordinaries of the parties, that one has the power to dispense in whose diocese the marriage is to be celebrated; if it is to be celebrated by the parties outside their dioceses, any of the local Ordinaries of the parties can dispense.

It is customary and, considering clerical expenses, it is laudable, to send an offering with the petition for dispensation from banns.

#### SECTION 4. The Obligation of revealing Impediments.

Those of the faithful who know of any impediments whatsoever are bound to make them known to the local Ordinary or parish priest, even though they know them as a natural secret, or though they have undertaken, by a promise, or even by contract, not to reveal them, unless the secret is a professional one. The reason is that the Sacrament must be safeguarded from irreverence or nullity and all such promises must be conditional. The reason for the exception is that the common good to be secured by keeping professional secrets is of the highest moment. Therefore, doctors, nurses, solicitors, public officials, parish priests, are bound to keep secrets confided to them in the discharge of professional duties, since it is of supreme importance that we should be able to consult such people with confidence. If we could not do so, great harm would ensue to society in



general. Obviously, the seal of confession may never be violated for any reason whatsoever.

The obligation of revealing an existing impediment to a marriage is certainly grave, even if only one person know of it, and even after the banns have been published. The obligation of revealing an impediment lapses in certain cases, namely, in the case of professional secrets as stated, or when there would be grave spiritual harm to oneself or others, or public harm of great moment, or the risk of it, or any grave imminent harm to oneself, one’s relations, or a third person who might innocently suffer by disclosure. Furthermore, disclosure is not obligatory when it could be of no avail, or when a marriage can be prevented without disclosure. An impediment does not exist when a dispensation from it has been obtained, but if the impediment is publicly known, the dispensation obtained should also be made known in order to preclude scandal.

SECTION 5. The Duty of the Parish Priest when an Impediment becomes known

When a doubt arises as to the existence of an impediment, the parish priest is to make accurate inquiry, as by questioning under oath at least two trustworthy persons, except in cases of a suspected impediment that would cause defamation to the parties to be married ; he may also, if need be, question the parties themselves under oath. If the doubt arose before publication of the banns was begun or finished, the banns must be called and concluded, but the parish priest may not assist at the marriage without consulting the Ordinary if he prudently judge that a doubt still persists.

If an impediment has been certainly discovered and is occult, i.e., cannot be proved in the external forum, the parish priest must publish and conclude the banns and refer the matter, without mentioning any names, to the local Ordinary or the Sacred Penitentiary. If the discovered impediment is public and was discovered before publication was begun, the parish priest may not begin publication

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until the impediment has been removed in the external forum. Dispensation in the internal forum of conscience is not sufficient since scandal would be inevitable. If the impediment is discovered after the first or the second publication, the parish priest must conclude the publications and refer the matter to the Ordinary, for he may not proceed with the marriage on account of scandal.

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#### SECTION 6. Marriage after Banns

The parish priest who has inquired into the freedom of the parties to marry or has published the banns must, if he is not himself to celebrate the marriage, at once acquaint the priest who is to assist at the marriage by means of an authentic document, that is, one signed by the parish priest and stamped with the parish seal. An Instruction of the Sacred Congregation of the Sacraments on proof of freedom to marry lays down this prescription.<sup>1</sup> If the document is not sent bedmes the greatest inconvenience is caused, and for want of the document, people have attempted a civil marriage. If no document arrive in time, the marriage may be celebrated if the assisting priest is certain that there is no impediment, but he can by no means be always certain. He must then either send an urgent request for the document or consult the Ordinary.

After due publication of the banns, if no impediment, doubtful or certain, has been suspected or discovered, the parish priest must proceed to assist at the celebration of the marriage, not, however, before he has received all necessary documents, and not before the lapse of three days from the last publication, if no reasonable cause justify an earlier date. If a marriage does not take place within six months after publication of the banns, they must be published again unless the bishop decide otherwise.

The marriages of persons who have no fixed abode {vagi} are not to be celebrated except in cases of necessity without obtaining the sanction of the local Ordinary or priest delegated by him, for in such cases matrimonial impediments are more difficult to discover.

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<sup>1</sup> «*Λ*»  
 \*S.C. de Sacr.jJune 29, 1941.



## SECTION 7. Instruction of the Betrothed

The parish priest should not omit to instruct the betrothed on the sanctity of the Sacrament of Marriage, the mutual duties of the married and of parents towards their children. In regard to the sanctity of marriage, they should be taught that it is a Sacrament of the living, that it gives sanctifying grace and the right to actual helps in the married state to those who receive this Sacrament in the state of grace, that the married can, therefore, rely on God's special help to enable them to be faithful to one another, to grow in mutual appreciation and love, to bring up their children in the fear and love of God, and in due subjection to and respect for their parents, and to teach their children the beauty of Christian virtue. The mutual duties of the married comprise mutual love, forbearance, fidelity, esteem, authority and subjection, obligations of cohabitation and the rendering of marital dues when seriously required. The duties of parents extend to timely Baptism, care for the child's spiritual, moral, intellectual and temporal welfare, the cutting down of luxuries that interfere with proper maintenance of the family, and forethought for future children. It is wisely said that these instructions should always be most prudently given to both betrothed together, not as secret knowledge to be imparted sparingly and only in the confessional.<sup>1</sup> These instructions may be usefully repeated at the marriage celebration itself. The canons state that it is the parish priest who is to give these instructions, on account of his greater authority, but in large parishes they are given by assistant priests. Instruction to the bride on the physiological aspect of marriage and generation should be left to her mother, if such instruction be found necessary ; it should never be given by a priest in or outside the confessional.

Furthermore, the parish priest or, in his default, the confessor, should urgently exhort the betrothed to approach the Sacrament of Penance before marriage and to receive the Holy Eucharist devoutly. Holy Communion is best

<sup>1</sup> Cappello, III, η. 104«



received a day or two before or early on the wedding morn, since the long fast and natural excitement of the bride who waits for Holy Communion during the Nuptial Mass, if one is celebrated, are apt to cause nervous prostration. Confession before marriage is urged in the canons, though the state of grace may, of course, be secured by an act of contrition, but confession would be necessary in some cases, in order to repair any public scandal that might have been given. Those who have been only civilly married and who are at last induced to rectify an irregular and sinful way of living by celebrating marriage canonically, should always be advised to go to confession, an obligation that is usually imposed on them by the local Ordinary when permission is given to convalidate the union.

SECTION 8. The Consent of Parents

The consent of parents is not necessary for the valid marriage of their children. But the marriage of young people in opposition to the express and reasonable wishes of parents is a grave sin. A parent's dissent may be unreasonable. Thus a daughter may have a just reason for contracting a marriage without consulting her parents. A father cannot oblige his son or daughter to marry, though he can urge an already existing obligation, such as the duty to assist parents in grave need. On the other hand, parents act unjustly if they prevent their children from having reasonable opportunities of choosing a partner.

The parish priest is obliged (c. 1034) seriously to warn young people not to marry without the knowledge and consent of their parents. If his warning is not heeded, he may not assist at their marriages without consulting the local Ordinary.

PRE-NUPTIAL INQUIRY FOR ENGLAND AND WALES

The Sacred Congregation of the Sacraments issued an Instruction on June 29, 1941, concerning the questions to be put to persons who wish to marry, and the *Litterae testimoniales* and the *Nihil Obstat*. The following procedure is prescribed by the Hierarchy of England and Wales for use in those countries.

1. The Inquiry.

The form contains the following questions, which must be put to each party by the parish priest, who also must fill in the answers.

1. Surname, Christian names, father's name, mother's name, profession, religion, places and dates of birth, baptism, confirmation, proposed marriage.

2. Have you ever contracted or attempted a religious or civil marriage? With whom? Place and date. How was it dissolved and when?

3. Present address. How long have you lived there?

4. Previous addresses of six months' duration since the age of puberty.

5. Any impediment to the proposed marriage?

6. Are you both marrying freely and of your own accord?

7. If a minor, have you the consent of your parents?

8. Are you sufficiently instructed in Christian doctrine? Do you understand the chief ends, the rights, and obligations of marriage?

9. Do you both intend to contract marriage in accordance with the teaching of the Catholic Church?

10. Do you both intend to contract marriage without any reservations or conditions to your consent?

Solemn declaration of the truth of the answers to be signed by the party. Signature of the parish priest.

The form duly filled in must be kept in the parish archives.

2. *Litterae testimoniales* and *Nihil Obstat*.

These are not required when both parties belong to England or Wales, in virtue of a dispensation of the Sacred Congregation of the Sacraments, Nov. 6, 1947; cf. *Clergy Review*, March 1948, p. 194.

If, however, one or both of the parties do not belong to England or Wales, it will be necessary for the parish priest to obtain the *Litterae testimoniales* of their Ordinary, and for the parish priest of the place of celebration of the marriage to obtain the *Nihil Obstat* of his Ordinary. A special form of application has been drawn up to be used when applying to the Ordinary.

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CHAPTER X

THE IMPEDIMENTS TO MARRIAGE (cc. 1035-1042)

SECTION 1. General Principles

All persons can enter into the contract of marriage if not forbidden to do so by law (c. 1035). Law may so forbid marriage as to render the contract completely void or merely sinful. Thus, an attempted marriage contract between brother and sister is completely void ; marriage without dispensation with a person who has taken a private vow of celibacy is valid but sinful.

An impediment to marriage is a circumstance establishing a certain incapacity between two persons so as to affect the contract itself. Impediments affect the individual and are, therefore, equivalent to law. A public impediment is one that can be proved in the external forum ; if it cannot, it is occult (c. 1037). It is sufficient that the fact from which an impediment arises should be public.<sup>1</sup>

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2. The canons (c. 1036) define the precise differences between impediments that annul a contract *ab initio* and those which render a contract unlawful and sinful only, leaving its validity untouched. A prohibitory impediment is the embodiment of a law that seriously forbids but does not annul the matrimonial contract where this impediment exists. An annulling impediment both seriously forbids the attempted marriage and bars the valid contract. Since an annulling impediment acts by way of an incapacitating law, ignorance of it does not render it of no avail, for such laws of the Church do not fail to bind those who are ignorant of them (c. 16). But ignorance of a merely prohibitory impediment, as that of a private vow, will excuse from sin, since sin is in the conscience and is not committed by those who are not conscious of wrong-doing.

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<sup>1</sup> P.C.C.J. on c. 1037, June 25, 1932. Gaspard, I, n. 210, states that the Sacred Penitentiary retains its former practice of judging an impediment public or occult in accordance with the case or difficulty with which it can become known.



3. The matter is debated as to the cessation of an ecclesiastical impediment in urgent cases, where a dispensation could be obtained, but cannot be at once obtained. A distinction must be made between marriage to be contracted and marriage already contracted in good faith.

In cases of marriage to be contracted where a known impediment exists :

(û) If there is no very great urgency for the marriage the impediment does not cease.

(£) If there should ensue the gravest inconvenience and harm to a community (as v.g., a small community of Catholics living amongst pagans with no possibility of petitioning for a dispensation that could be given) the ecclesiastical prohibitory impediment is considered to cease.

(c) If, in a particular case, a prohibitory impediment should cause the spiritual harm of souls, it ceases.

(if) The same may be probably said of annulling impediments,<sup>1</sup> always provided that they can be dispensed by the Church.

In cases where a marriage has been contracted in good faith with an annulling impediment which can be and usually is dispensed, when one of the two parties becomes aware of the impediment, it probably ceases in very grave inconvenience, at least in conscience, and that party may have conjugal relations. But the confessor or parish priest should get an express dispensation as soon as conveniently possible.

## SECTION 2. Doubtful Impediments

An impediment is sometimes suspected to exist. It is then called a doubtful impediment. The following are the rules that govern the case :

1. If the doubt concerns the law of the Church, i.e., whether the law extends to the case or not, the impediment is to be considered as non-existent (c. 15).

2. If the doubt concerns a fact, v.g., whether or not two parties who wish to be married are related within the

<sup>1</sup> Cappello, III, n. 199.



forbidden degrees, the impediment is to be considered as existing.

3. If the doubt concerns divine law, the impediment is to be considered as existing, as when it is doubted whether Titius and Bertha are brother and sister. An apparent exception is made in the cases of a doubt of law *{dubium juris}* as to what constitutes impotence, for so long as the doubt is not solved, marriage in this case is not to be forbidden (c. 1068), as when it is doubted whether loss of ovary and womb really render a woman incapable of marriage.

4. If the doubt concerns a fact of divine law, whether of Natural law or divine positive law, as, v.g., when there is a doubt concerning the death of husband or wife, or of the validity of previous marriage, the impediment is to be considered as existing. An apparent exception is made in the case of doubtful impotence *{dubio facti}*.

5.It is gravely sinful to attempt to enter upon marriage with a canonical impediment. In rare cases and accidentally, owing to scandal or grave harm, there would be no sin. If the impediment is doubtful the marriage may or may not be contracted in accordance with the doctrine set out above.

SECTION 3. List of Impediments

The annulling impediments to marriage are : Insufficient age, impotence, existing marriage bond, disparity of worship, Sacred Orders, solemn religious profession, abduction, crime (a technical term that includes adultery with a promise to marry or civil marriage, adultery and murder of consort, murder of consort alone), consanguinity, affinity, public propriety, spiritual relationship, legal adoption if civilly it voids marriage. The prohibitory impediments are certain vows, difference of religion (both parties being baptized and one being a Catholic, the other not a Catholic), and legal adoption if civilly it bars but does not void marriage. Minor impediments are consanguinity in the third collateral degree, affinity in the second collateral degree, public propriety in the second degree, spiritual

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relationship, crime arising from adultery with either promise to marry or attempted civil marriage. The other impediments are major.

Marriages that were attempted before the publication of the new *Codex Juris Canonici* under existing impediments have not been validated by any change in the nature or extent of impediments in the recent discipline of the Church. The recently codified canon law has not retrospective force. A former impediment may cease to be an impediment, but its original effect persists if the impediment existed at the time of marriage.

## CHAPTER XI

### THE PROHIBITORY IMPEDIMENTS (cc. 1058-1066)

#### SECTION 1. The Impediment of Vow (c. 1058)

The vows that render marriage sinful between two parties, one or both of whom are under vow, without, however, affecting its validity are the simple vows of virginity, perfect chastity, celibacy, receiving Sacred Orders, entering the religious state. No simple vow renders an attempted marriage null unless by special prescription of the Holy See.

##### 1. The Vow of Virginity

Virginity, materially and physically viewed, is the state of bodily integrity present in one who, if a male, has never had seminal emission, if a female, has not lost her maidenhood by violation of the hymen. The Church considers virginity to be present in a woman who has not had sexual intercourse ; in a male who has had no carnal knowledge of woman. Involuntary loss of sexual integrity does not destroy virginity. The presence of the hymen in woman is a sign of physical virginity ; the absence of it is not necessarily a sign of the loss of virginity. Virginity as a virtue is the will and intention in one who is still either physically a virgin, or whose virginity has not been wilfully violated, of refraining from all deliberate carnal pleasure, both sinful and not sinful, the latter being possible only in the married state. The vow of virginity has as its object in the male, abstinence from sexual intercourse or voluntary pollution ; in the female, abstinence from sexual intercourse or unnatural culpable violations of bodily integrity.<sup>1</sup>

To contract marriage with the vow of virginity is normally a grave sin, for the intention is, presumably, to violate the vow by consummating marriage, and such a one places himself or herself in a position of being obliged to render marital dues. Therefore, such a one cannot ask for the



marital dues first ; after virginity has been lost, marital dues may be asked for. But such a one is obliged, when asked the first time, to render marital dues, since the other party—not being, as is supposed, under vow—has a right to them. After the first marital intercourse the vow has become extinguished because incapable of fulfilment. If both parties to the marriage bound themselves to remain continent, there would be no sin in marrying, but some authors think that the marriage would be invalid. Cardinal Gasparri thinks that once marriage is contracted by a person under a vow of virginity, that person has complete marital rights and duties (c. 1111).<sup>1</sup>

## 2. The Vow of Perfect Chastity

This vow excludes all deliberate sexual pleasure, illicit or licit. The latter is possible only in marriage. Perfect chastity includes virginal chastity, and therefore sexual integrity. To contract a marriage with the vow of perfect and perpetual chastity would be, normally, a grave sin, since there would be, presumably, the intention of consummating marriage. After marriage, the person who vowed may not ask for marital dues, but they may be given if asked for. Cardinal Gasparri thinks that a limited dispensation from the vow is given in virtue of canon 1111. If the person who vowed survives the partner, the obligation of the vow revives. A vow of chastity taken in a Congregation or Religious Institute outside the Catholic Church is valid<sup>2</sup> and must be observed after the one who took the vow is converted. It is, therefore, opposed to divine right that such a one should marry. It is stated, however, that the vow is not a canonical impediment to marriage.<sup>3</sup>

## 3. The Vow of Celibacy

This vow merely excludes marriage. One who has vowed celibacy and marries, without dispensation, commits a

<sup>1</sup> Gasparri, I, on. 429, 430 ; a view that, as we think, is rightly traversed in *Periodica*, Oct., 1933.

<sup>1</sup> Coll. S.C. de P.F., I, n. 959, quoted by Cappello, III, n. 297.

\* Cappello, III, n. 297.

grievous sin against religion ; but after marriage, such a one can no longer keep the vow and may, therefore, give and ask for marital dues. On the dissolution of marriage, by the death of the other party or otherwise, the vow revives if it was absolute and perpetual.

#### 4. The Vow of taking Sacred Orders

This vow excludes marriage inasmuch as that state exposes the person who vowed to the proximate danger of violating his vow, since its observance after marriage is normally impossible. After marriage, the person who vowed may ask for and render marital dues, for this is not contrary to the vow, but the vow is not extinguished ; it revives if the person becomes free to take Orders, without prejudice to his obligations as husband or father.

#### 5. The Vow of entering the Religious State

By contracting marriage the one who vowed commits a grave sin. After marriage, he or she may ask for and render marital dues, for this is not contrary to the vow. The vow is not extinguished, but revives like the preceding vow.

### SECTION 2. The Impediment of Difference of Religion (cc. 1060-1064)

#### 1. Prohibition of Mixed Marriages

The Church universally and most seriously forbids marriage between two persons, one of whom is a Catholic and the other a baptized member of an heretical or schismatic, or atheistic sect. In danger of perversion of the Catholic party or offspring, the marriage is forbidden also by divine law. The prohibition of the divine law ceases when there is no danger of perversion, but the prohibition of the Church remains in general force, so that a dispensation for such a marriage is always to be sought. Indeed, a dispensation assumes that the prohibition of the divine law has ceased, that the danger of perversion is remote, and that there is also a serious reason for dispensation. If the non-

Catholic party is probably baptized, the marriage, if it has taken place, is upheld as valid until the absence of Baptism is certainly established, for absence of Baptism would invalidate the marriage if no dispensation had been obtained.

## 2. Dispensation reserved

The Church does not grant a dispensation from this impediment unless certain conditions are fulfilled, viz.:

1. There must be just and grave reasons for the marriage.

2. The non-Catholic party must give a guarantee to preclude all danger of perversion of the Catholic party and both parties must give a guarantee that all the children of the marriage shall receive only Catholic Baptism and only Catholic education. This refers to future children, but the obligation of divine law persists of safeguarding the Catholic faith of those already born (S.O. Jan. 16, 1942). The Catholic party must prudently try to convert the non-Catholic party.

3. There must be moral certainty that the promises will be fulfilled. The promises are, generally speaking, to be in writing.

The aforesaid conditions are usually necessary. A *sanatio* was granted for a death-bed marriage that had been invalidly contracted without the necessary guarantees. An admonition was added to the effect that the offspring already born and subsequent offspring should be educated in the Catholic faith, and every effort made to convert the non-Catholic party. Giving the guarantees is necessary for a valid dispensation.<sup>1</sup> They may be implicit.<sup>2</sup>

## 3. Reasons for Dispensation

Reasons that may be given in a petition for dispensation are: The benefit of the Church and Catholicism; the fewness of Catholics in a given place relatively to non-Catholics, where the former can freely practise their religion; a serious

<sup>1</sup>S.O., Jan. 14, 1932.

<sup>2</sup>S.O., May 10, 1941,



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## MARRIAGE

promise in writing and in presence of witnesses given by the non-Catholic party to embrace the Catholic Faith after marriage; if the mixed marriage is the only way of securing Catholic education of the children born of a previous marriage; the avoidance of scandal or defamation. Other reasons may be added, such as the advancing age of the woman, her poverty, and the usual canonical reasons, which may reasonably influence the will of the Superior.

### 4. Duty of the Catholic Party'

The Catholic party to a mixed marriage must prudently endeavour to convert the non-Catholic party. This obligation is one of the divine law of charity, and the making of the promise by the Catholic party is matter of Ecclesiastical law.

### 5. Marriage in a non-Catholic Church

It is stricdy forbidden for the parties to a mixed marriage, even though they have obtained a dispensation from the impediment, to celebrate their marriage in presence of a non-Catholic minister acting as such, whether before or after marriage in the Catholic Church, whether personally or by proxy (c. 1063). The said minister would be acting as such if he performed a ceremony that had any semblance of being religious. Though the sects in England do not regard marriage as a Sacrament, their ministers acting as such in marriages certainly perform a religious rite, and it cannot be maintained that they are acting merely as civil servants. They are, indeed, also civil servants in the Established Church, but not only civil servants. They are primarily religious ministers. Consequently, if the parish priest knows that the parties intend to violate this law of the Church or have violated it, he may not assist at their marriage without consulting the local Ordinary (c. 1063). In an extreme case, the parish priest may assist at such a marriage, if the reason for doing so is very grave, if the marriage cannot be delayed, if the Ordinary cannot be consulted, and if there is no scandal. After marriage before

## DIFFERENCE OF RELIGION in

heretical or schismatic minister, which would now be invalid, the parish priest may not assist at the marriage except for a very grave reason, without consulting the Ordinary and unless the Catholic party has been duly absolved.<sup>1</sup> A salutary penance is imposed on the Catholic party by the Ordinary such as confession and Holy Communion each month for some months. This is a truly salutary penance, since it gives the Catholic party renewed opportunities of appreciating the gravity of the sin committed and the doctrine of the Church on the sanctity of sacramental Marriage. In cases when the non-Catholic minister is acting merely as a civil servant, the Church does not forbid the parties to express their legal (not their matrimonial) consent in his presence, for the sake of securing the civil effects of marriage, if the civil law so prescribes. If the non-Catholic minister employ no religious ceremony—which would be very unusual in this country—or if the Catholic party intend to take no part in any religious ceremony—an impossible supposition to make if the marriage takes place in a non-Catholic church—then the prohibition of the Church does not appear to be verified, though on other grounds, such as scandal, contempt, indifference, the procedure would be grievously sinful.

### 6. Marriage without Dispensation

A Catholic who contracts a mixed marriage -without a dispensation, knowingly and freely, is by that very fact excluded from legitimate ecclesiastical acts and from the use of sacramentals until a dispensation is obtained from the Ordinary. Any ignorance of this penalty, except studied ignorance, excuses from the penalty. The legitimate acts referred to include—what would more especially affect ordinary layfolk—acting as sponsor in Baptism or Confirmation. Other acts are enumerated in canon 2256 (c. 2375). Furthermore, a Catholic who goes through the form of marriage in presence of a non-Catholic minister acting as such, whether before or after marriage in presence of the priest and two witnesses, incurs excommunication reserved

<sup>1</sup> Cappello, III, n. 317, citing S.O., Instr., Dec. 12, 1888, n. 8.



to the Ordinary of that Catholic party.<sup>1</sup> This is so even if a dispensation from the impediment has been given, and even if the Catholic party remain passive, without showing any favour to the Protestant rite? The Catholic party incurs the same excommunication if the parties agree before or during marriage, even implicitly, to educate all or any of their children outside the Church (c. 2319, 2) ; also, if they knowingly presume to have their children baptized by a non-Catholic minister. Parents and those in the place of parents who knowingly have the children educated or brought up in a non-Catholic religion incur the same penalty. All those mentioned in this paragraph are suspect of heresy and are liable to be punished as such (c. 2319).

#### 7. Convalidation of invalid Marriage

It is the duty of Ordinaries and other pastors to deter the faithful, as far as possible, from mixed marriages. If they cannot prevent them, they should endeavour with all zeal to secure that marriages should not be contracted in opposition to the laws of God and of the Church. After every mixed marriage, they must carefully see to it that the promises made are faithfully kept (c. 1064). Of course, if a mixed marriage has been attempted by going through the civil form only, the Catholic party must make the marriage right by asking for a convalidation if the non-Catholic party will go through the canonical form, otherwise, a *sanatio in radice* is the only remedy. Many Catholics fall away from the Church altogether and bring up their children outside the Church owing to a civil marriage. They may succeed in searing their consciences, but in many cases, as experience proves, they lead an unhappy life with the shadow of sin always upon them. More of these cases have been rectified by the sympathy and kindness of a pastor

<sup>1</sup> This is, at present, the commonly received meaning of canons 1063, 2319i b 1 ; the Catholic incurs excommunication by the fact that the services of a non-Catholic minister, as such, are accepted at all for the purpose of receiving the matrimonial consent. Thus, Cappello (*de Censuris*, n. 369) appears to have no doubt about it, and Gasparri (I, n. 471) simply states the fact of excommunication incurred.

<sup>1</sup> S.O., Dec. 10, 1902.



than by ill-judged severity. These unmarried people are living in concubinage, but if the pastor tells them so, he may alienate them for life.

#### 8. Marriage with Apostate

Besides a severe prohibition against mixed marriages, the Church warns the faithful to shrink from contracting marriages with those who have notoriously renounced the Catholic Faith, even though these have not joined a sect, or who have become members of a society condemned by the Church (c. 1065). This prescription of the Church is to be urged by the pastor in virtue of his office, and by all others by virtue of charity. There are many societies that have been condemned, as, v.g., Freemasons, Fenians, Nihilists, Socialists, Old Catholics, cremation societies, the Young Men's Christian Association.<sup>1</sup> If the faithful do not heed the pastor's warning he may not assist at their marriages with such people without consulting the Ordinary. The latter may permit the marriage if there is a grave urgent reason for it, and if he prudently judge that sufficient precaution is guaranteed for the Catholic education of all the children, and for the removal from the Catholic party of the danger of perversion (c. 1065). In extreme cases and if there is no time to refer the matter to the Ordinary, the pastor may assist at such marriages provided the necessary guarantees are given and there is good certainty that they will be carried out, but he should notify the Ordinary of the marriage as soon as possible. In this country, such extreme cases can hardly arise, for a pastor can communicate with his Ordinary in a very short time.

#### Note on the Marriage of a notorious Sinner

If a public sinner or one who is notoriously under censure refuses to make sacramental confession or to be reconciled to the Church, the parish priest may not assist at the marriage of such, except for a grave urgent reason, about which he must consult the Ordinary if possible (c. 1066). The point here insisted upon is that public scandal should be publicly repaired. Therefore, if a public

<sup>1</sup> Marriage with a Communist is ruled in the same way; S.O., Aug. 11, 1949.

## MARRIAGE

sinner is known to have gone to confession, even though, in point of fact, he has confessed sacrilegiously or hypocritically, sufficient reparation has been made externally. The priest could not use knowledge acquired in the confessional, and he could co-operate materially in the sacrilegious marriage of such a one. The pastor may not refuse to assist at the marriage of one whose sin or censure is occult, but prescind-  
ing from the use of confessional knowledge he should warn the person to set himself right before God by an act of contrition, or preferably by confession. A grave reason would justify the pastor assisting at the marriage of a public sinner or one notoriously excommunicated. Amongst grave reasons are enumerated the avoidance of death or other grave harm, serious harm to the community or the parties themselves, the fact of a civil marriage having already taken place or the danger of its taking place, for in these two cases the parties would be in proximate danger of living in concubinage.

The pastor is to consult the Ordinary before assisting at the marriage of a public sinner or one notoriously excommunicated, but a grave reason will excuse him, as, for example, if delay would cause great inconvenience, certainly or even probably. If, however, the censure has been specifically and juridically imposed, a most serious reason for assisting would be necessary, and only the very gravest necessity would justify assistance at the marriage of an excommunicate who is to be shunned. These prescriptions do not apply to Catholics who refuse to be instructed in Christian doctrine (c. 1020). In their cases the pastor should not refuse to marry the parties.<sup>1</sup>

### SECTION 3. The Impediment of Legal Relationship (c. 1059)

Legal relationship arising from legal adoption is a prohibitory impediment if the Civil law forbids but does not void marriage between adopted and adopter. The force of the impediment is wholly derived from the Church's law. If legal relationship supervenes on marriage, it neither dissolves it nor precludes its use.

<sup>1</sup> P.C.C.J., June 3, 1918.



## APPENDIX 1

### Pope Pius XI on Mixed Marriages

Pope Pius XI has expressed the Catholic doctrine on mixed marriages in these terms in the Encyclical letter, *Casii Connubii* :

“ The religious character of marriage, its sublime signification of grace and the union between Christ and the Church, evidently require that those about to marry should show a holy reverence towards it, and zealously endeavour to make their marriage approach as nearly as possible to the archetype of Christ and the Church.

“They, therefore, who rashly and heedlessly contract mixed marriages, from which the maternal love and providence of the Church dissuades her children for very sound reasons, fail conspicuously in this respect, sometimes with danger to their eternal salvation. This attitude of the Church to mixed marriages appears in many of her documents, all of which are summed up in the Code of Canon law : ‘ Everywhere and with the greatest strictness the Church forbids marriages between baptized persons, one of whom is a Catholic and the other a member of a schismatical or heretical sect ; and if there is, added to this, the danger of the falling away of the Catholic party and the perversion of the children, such a marriage is forbidden also by the divine law? If the Church occasionally, on account of circumstances, does not refuse to grant a dispensation from these strict laws (if the divine law remains intact and the dangers above mentioned are provided against by suitable safeguards), it is unlikely that the Catholic party will not suffer some detriment from such a marriage.

“ Whence it comes about not infrequently, as experience shows, that deplorable defections from religion occur among the offspring, or at least a headlong descent into that religious indifference which is closely allied to impiety. There is this also to be considered that in these mixed marriages it becomes much more difficult to imitate by a lively conformity



of spirit the mystery of which We have spoken, namely, that close union between Christ and His Church.

“Assuredly also will there be wanting that close union of spirit which, as it is the sign and mark of the Church of Christ, so also should it be the sign of Christian wedlock, its glory' and adornment. For where there exists diversity of mind, truth, and feeling, the bond of union of mind and heart is wont to be broken, or at least weakened. From this comes the danger lest the love of man and wife grow cold and the peace and happiness of family life, resting as it does on the union of hearts, be destroyed.”

## APPENDIX 2

### Invalid Dispensations

In a decree of the Holy Office, January 14, 1932, confirmed by the Pope and ordered by His Holiness to be published and observed by all concerned, it is laid down that dispensations from the impediments of mixed religion and difference of worship granted by those delegated to give them, including those who can by law' give them in danger of death (c. 1044), are invalid under certain conditions. The dispensations will be invalid if the guarantees are not given by means of a legal document in countries in which such promises are upheld by Civil law. The words of the decree are as follows : *Emi ac Revmi Dni Cardinales fidei ac morum integritati tutanda prepositi, in plenario conventu habito fena iv die 13 Januam, 1932, pra oculis etiam habentes recentes Ssmi Domini Nostri Encyclicas Litteras, quarum initium Casti connubii, stricti sui muneris esse duxerunt, omnium Sacrorum Antistitum nec non parochorum aliorumque, de quibus in canone 1044, qui super mixta religionis ac disparis cultus impedimentis dispensandi facultate aucti sunt, attentionem excitare et conscientiam convenire, ne dispensationes hujusmodi unquam impertiantur, nisi praslitis antea a nupturientibus cautionibus, quarum fidelem executionem, etiam vi legum civilium, quibus alteruter subjectus sit, vigentium in loco actualis vel (siforte alio discessuri pravideantur) futura eorum commorationis, nemo prapedire valeat, secus ipsa dispensatio sit prorsus nulla et invalida.*

As to the interpretation of the foregoing decree, a private reply of the Holy Office, August 4, 1932, is helpful. It was, in effect, as follows : Regarding the promises to be given in mixed marriages, the decree requires no change in the ecclesiastical practice of those countries in which, since the civil laws do not recognize the binding power of promises relating to the future religious education of children, the Ordinaries will be able, as they have been heretofore, according to the faculties which they may have, to grant dispensations and execute rescripts for mixed marriages, observing the requirements of law ; provided, however, that the Ordinaries themselves judge that there exists in every case a moral certainty that the promises will be kept.

The promises made by a non-Catholic party in a mixed marriage are not legally enforceable against the party in England. The right of a father to bring up his children in his own religion is inalienable. In *Agar Ellis v. Lascelles* in 1878, a husband in his Marriage Settlement covenanted to allow the issue of the marriage to be brought up in the Catholic religion, the husband being a non-Catholic. It was held that despite this fact, the father was entitled to have the children educated at non-Catholic schools, and his action was upheld by the Court. But the Court will always consider the welfare of the child first, and a father's legal right may be set aside. This position was stated in the Court of Appeal, *in re Carroll*, in 1930.

NOTE.—The Holy Office (May 10, 1941) replied that, although the Holy See strictly demands that each party to a marriage, for which a dispensation from difference of religion or difference of worship is sought, should be required to give explicit guarantees, nevertheless, the use of the power of granting the dispensation, whether ordinary or delegated, cannot be said to be invalid if each party gave the guarantees at least implicitly. This is explained to mean that the said parties acted in such a way that it could be inferred and proved in the external forum that each party knew of this obligation, and had manifested the firm determination of fulfilling such obligation. A reply to the Ordinaries of Nigeria and the Cameroons (P.F., Nov. 9, 1934) stated that they could grant dispensations for mixed marriages as before, since the decree (S.O., Jan. 14, 1932) does not concern their territories, English law being there in force (Bouscaren II, p. 280).



## CHAPTER XII

### THE DIRIMENT IMPEDIMENTS (cc. 1067-1080)

#### SECTION 1. The Impediment of Age (c. 1067)

A male before his sixteenth year of age completed and a female before her fourteenth year of age completed cannot validly marry'. This impediment is ecclesiastical, and therefore does not affect the unbaptized, who may marry, in accordance with Natural law, when they have attained the discretion that is sufficient to enable them to give a matrimonial consent. The canonical age must be interpreted strictly, so that the year is to be reckoned as completed on completion of the sixteenth anniversary of the birthday, since the day of birth is not taken into account (c. 34, 3, 3). A boy born on October 1, 1900, could not validly marry until October 2, 1916.

The reason for establishing these minimum ages is the presumption of want of consent, incapacity to generate and to undertake the burden of family life.<sup>1</sup> In the older discipline, the respective ages were fourteen and twelve—the English legal ages till 1929—unless at an earlier age physical aptitude and sufficient discretion were present [*malitia supplebat etatem*). Thus, the ages were a presumption *de jure*, but not *juris et de jure*. The Church has not fixed a superior limit of age as a bar to marriage. The ages of the parties who wish to marry are normally to be sought in the parochial baptismal register ; failing that, from the testimony of parents, witnesses or some authentic documents.

2. The pastor will not usually be deceived as to the canonical age of the parties in this country, but he is warned (c. 1067, 2) to dissuade young people from marrying before they have reached the marriageable age customary in their respective countries. The reason for this wise provision is that too early marriages are harmful both to parents

<sup>1</sup>Justinian appears to have been the first to determine that legal puberty was to be settled by age not by physical development.



and children, the young have not the necessary stability of purpose and maturity of judgment for raising a family, and a very youthful husband cannot usually earn a suitable wage. On the other hand, late marriages are not commendable, and still less are long courtships.

3. Since the contract of marriage arises from true and legitimate consent, physical immaturity is no bar to the contract. It is important to distinguish immaturity from true incapacity, for the latter is the diriment impediment of sexual impotence. The Church has laid down ages which apply to all countries universally. Early marriages proved to be as much a danger to morality as to health. Marriage at the ages of six or seven was forbidden.<sup>1</sup> The ages laid down are the average ages of puberty ; capacity to generate may arrive somewhat later. In Northern latitudes it arrives normally about the twentieth year ; whereas natural puberty arrives at the age of about sixteen in males. In hot climates puberty arrives much earlier, as, v.g., at the age of ten in Egypt and twelve in India. The impediment of age would not be present in a marriage between a baptized person of the canonical age and a pagan below it, if the latter had sufficient discretion.

4. This impediment can be dispensed by the Church. It also obviously disappears by lapse of time, but a marriage that was invalid by reason of age does not automatically become valid. A new consent given by the party or parties aware of the previous invalidity is necessary. This consent must be renewed in the canonical form if the invalidity was public (cc. 1133-1135). Dispensation has been given, but rarely. In some cases, after dispensation was granted, the parties were forbidden to cohabit until both had attained physical maturity,<sup>2</sup> for cohabitation before that period leads to immorality and infidelity to marriage vows.

5. The various European codes assign different ages respectively for legal marriage. The following ages are stated : Italy (m. 16 ; f. 14), France (m. 18 ; f. 15), Austria (m. f. 14), Hungary (m. 18 ; f. 16), Belgium (m. 18 ; f. 16), Germany (m. 21 ; f. 16), Switzerland (m. 20 ; f. 18),

<sup>1</sup> Pope Benedict XIV, *Omnium soliditudinum*.

<sup>2</sup> S.O., May 2, 1866.

Spain (m. 14 ; £ 12), Holland (m. 18 ; £ 16). Recent Concordats with the Holy See may have modified these ages.<sup>1</sup> In England, parents or guardians can forbid the banns of minors ; no registrar would then make out a licence. But if minors contract marriage fraudulently, without or against their parents' consent, the marriage will not be set aside, provided that each party is at least sixteen years of age, the legal age now (Act, 1929). After the marriage of minors, parents can bring an action for abduction, seduction, or loss of services, but the Courts rarely interfere with the marriage.

## SECTION 2. The Impediment of Impotency (c. 1068)

The canons lay it down that impotence, antecedent and perpetual, whether on the part of the man or of the woman, whether known to the other contracting party or not, whether absolute or relative, is an annulling impediment to marriage by the law of nature. If the impediment is doubtful, whether in law or in fact, marriage is not to be forbidden. Sterility is no bar to marriage. It is only necessary here to state briefly the conclusions arrived at in the subsequent treatment in Latin for the pastor. The absolute physical incapacity for sexual intercourse, which is here defended as alone constituting the true impediment, is as follows :

1. On the part of the male, incapacity to perform the marital act in the normal natural way with seminal emission.

2. On the part of the woman, the absence of the vagina. These are stated as the absolute incapacity. But there may be relative incapacity between a particular man and a particular woman.

### Notanda pro Pastore \*

#### 1. De Conceptu Impotentiae

i. Impotentia in genere potest considerari ut impotentia generandi aut impotentia coeundi. Impotentia generandi

<sup>1</sup> Cappello, III, n. 339.

»cf. Gaspard, I, n. 502 sqq ; Cappello, III, n. 340 sqq ; Wernz-Vidal, V, p. 237 sqq.



est sterilitas, impotentia coeundi est incapacitas copulam conjugalem perficiendi. Sed quum copula conjugalis sit actus externus humanus, ejus definitio pendere non potest ex elemento quod omnes latet, *scii.*, a generatione, quod est opus et effectus naturae ; ergo cum recentibus auctoribus non definimus copulam conjugalem ut copulam perfectam, nam quaenam sit perfecta est in controversia, neque ut copulam de se aptam ad generationem, nam nescitur in casu concreto utrum necne aliqua copula sit apta. Ergo copula conjugalis est actio qua vir semen modo naturali effundit in mulieris vaginam. In hac definitione includitur implicite nostra doctrina de potentia mulieris excisæ habendi veram copulam conjugalem, nam vagina solum requiritur. Præterea, quum copula conjugalis faciat matrimonium indissolubile, et Ecclesia sola judicium ferat de hac indissolubilitate, necesse fuit ut externus actus facile discerneretur, et ut evitaretur omnis equivocatio in definitione.

2. Ne dicatur uxor esse sterilis inter praegnationis tempus, sterilitas definiri debet ut vitium modo permanenti impediens generationem ex copula naturaliter peracta. Haec sterilitas etsi perpetua matrimonium nec dirimit nec impedit (c. 1068, 3).

3. Impotentia est certa vel dubia prout de ea certo constat vel dubitatur. Impotentia est antecedens quae existit ante matrimonii celebrationem ; subsequens, quae matrimonium validum subsequitur. Impotentia est perpetua quæ sine miraculo aut medio illicito aut probabili vitae periculo tolli non potest ; est temporaria, quae lapsu temporis vel mediis licitis et sine probabili vitae periculo vel mediis spiritualibus sine miraculo cessat. Impotentia est naturalis quae oritur ex corporis vitio naturali et congenito, accidentalis est quae oritur ex causa extrinseca, ut ex homine, morbo, infortunio, daemone, maleficio. Impotentia est absoluta, quæ impedit coitum cum qualibet persona sexus alterius ; est relativa, quæ coitum cum aliqua persona vel aliquibus sed non cum qualibet persona sexus alterius excludit.

Impotentia est organica quæ provenit ex organorum laesione quæ copulae inserviunt ; est functionalis, quæ,



organis intactis, provenit ex morbo, ita ut organa naturaliter agere non possint.

4. Præterea, ad veram copulam maritalem, non modo requiritur ut uxor vaginam penetrabilem habeat, sed ut maritus ex sua parte illam penetrare valeat, et insuper semen inibi infundat. Nam objectum contractus conjugalis est jus in corpus exercendum per actus per se aptos ad generationem. Ideo non quamlibet copulam habere intendunt nupturientes, sed naturalem, illam, scilicet, in qua naturali modo carnaliter conjunguntur quo organa sexualia naturalem functionem exercent. Quum ergo theologi dicant objectum contractus matrimonialis, seu materiam, esse jus in corpus alienum in ordine ad actus per se ad generationem aptos, nil aliud intendunt dicere quam copulam naturalem cum seminis effusione intra vas mulieris. Alienum est ergo a vero conceptu copulæ maritalis ut quis putet cujuslibet humoris effusionem sufficere, non vero illius humoris qui e testiculis radicitus provenit.

5. Jamvero, ut hæc conclusio melius pateat quaedam animadvertenda sunt.

(a) Quamdiu senes copulae facultatem retinent, illis matrimonium non prohibetur, id quod perpetuus usus Ecclesiae comprobatur, ipsa ratio confirmat, et leges civiles universim permittunt.<sup>1</sup> Dum enim senes coeundi potestatem retinent, generandi facultate jam diu deperdita, quis eos ab omni usu licito matrimonii privaret? Ergo incapacitas vere coeundi non vero generandi impotentiae impedimentum dicendum esse videtur.

(A) Præterea, castrati, sive naturaliter eunuchi, sive arte spadones, sunt incapaces matrimonii. Id declaratum est a Pp. Sixto V (Ep. *Cum Frequenter*, Junii 27, 1587, *ad Hispaniarum Nuntium Apostolicum*; *Cod. Juris Fontes*, I, p. 298). En verba Pontificis: “Certum ac manifestum est, eos (eunuchos et spadones) verum semen emittere non posse . . . humorem forsitan quemdam similem semini, licet ad generationem et ad matrimonii causam minime aptum effundunt . . . Considerantes, quod ex?spadonum hujusmodi et eunuchorum conjugiiis nulla utilitas provenit, sed potius tentationum

<sup>1</sup> Venn., IV, n. 40.

illecebræ et incentiva libidinis oriuntur, mandamus ut conjugia per dictos, et alios quoscumque eunuchos et spadones . . . contrahi prohibeas, eosque ad matrimonia inhabiles auctoritate nostra declares, et matrimonia ipsa sic de facto contracta, nulla, irrita et invalida esse decernas.” Exinde sequi videtur virum esse impotentem qui utroque testiculo caret quia verum semen effundere nequit. Nec id eruitur tantum ex jure ecclesiastico et non etiam ex jure naturæ. Nam Pp. Sixtus V declaravit matrimonia præterita cum eunuchis fuisse irrita; at nulla erat lex ecclesiastica ante id temporis quæ talia matrimonia prohibuit; hoc ex eo patet quod ante id temporis erant qui in dubium vocarent invaliditatem matrimonii eunuchorum.<sup>1</sup>

6. Ergo ex parte viri impotentia dicit incapacitatem semen verum infundendi in vas mulieris naturali modo, i.e., per penetrationem oris vaginae. Ergo vitia quæ in viro impotentiam constituunt sunt 2 :

(a) Absentia membri virilis.

(b) Carentia utriusque testiculi (nam unus testiculus sufficit), vel atrophia perpetua et insanabilis utriusque testiculi. Cryptorchidae vero testiculos habent in abdomine reconditos, sicut infantes quorum testiculi non statim a nativitate in scrotum descendunt.

W Hypospadiæ et epispadiæ, quorum scilicet membri virilis foramina ita locantur infra vel supra penem ut semen in vaginam effundere non possint. Quodsi, raro in casu, tales possint rite semen in vas effundere, sunt potentes.

(d) Virga adeo magna aut exigua ut penetratio vaginae sit impossibilis, quæ forte non est absoluta impotentia at saltem est relativa respectu plurimarum mulierum.

(e) Defectus conductionis seminis a testiculis per vasa deferentia, ut in vasectomia duplici, ubi utrumque vas deferens adeo incisum est ut transitus seminis ad vesiculas seminales impossibilis sit, si conditio est insanabilis.<sup>3</sup>

(f) Defectus erectibilitatis membri virilis. Hic defectus vero potest esse temporarius aut perpetuus, absolutus aut

<sup>1</sup> Ubach, II, n. 797, nota 1, ad (a). . . cf. Wernz-Vidal, V, n. 224.

•Negant aliqui; cf. Theol. Studies, Dec. 1947, p. 536; e.contra. *Periodica*, June 15, 1947.



relativus ; provenire solet sive ex defectu functionis ipsius, sive ex phantasia et rubore, ut sæpe in maritis juvenibus.

(£) Impossibilitas semen effundendi nisi ad os vaginae, quæ externa sunt mulieris pudenda, sive hic defectus oriatur ex parte viri sive ex parte mulieris, quæ vel ita arcta est ut nequeat viri membrum admittere, vel ita vaginismo laborat, ut ab omni tactu cum spasmate nervoso abhorreat et omnem accessum sexualem propulset. Talis impotentia potest esse temporaria vel perpetua, absoluta vel relativa. Negari nequit generationem sequi posse semine deposito ad os vaginae, etsi forte raro, nam viri spermata quamdam motivam vim habent, at potentia ad consummationem requiritur juxta modum naturalem, et valor matrimonii pendere non debet ex his quæ raro sed potius ex his quæ ordinarie eveniunt. Insuper, talis modus dimidiatae copulae non est contractus objectum, nec a natura ut sic intendi supponi potest, et quamvis generatio sequatur, consummatio matrimonii haud dimetienda est ex facto generationis sed ex ipsa copula naturali.

7. Ex parte mulieris impotentia adest :

(a) Si caret vagina.

(b) Si vagina est occlusa seu impenetrabilis. Hoc vitium intelligitur in vagina quæ fere ab ipso ostio est occlusa, non vero si occlusa est ob operationem chirurgicam deintus, i.e., prope os uteri, nam tunc manet tota vagina, etsi non sit verus canalus qui spermata admittit ad uterum, vel ovula feminea extrudit ex ovariis per uterum ad extra.

(c) Si mulieris pudenda sunt nimis arcta, sive absolute pro omnibus viris sive relative pro hoc viro.

(J) Si mulier vaginismo seu hyperaesthesia vaginae laborat.

In his tribus ultimis casibus mulier est potius ad tempus impotens si vitium sanari possit per operationem quæ probabile grave vitæ periculum non allatura est.

8. Casus in quo mulieris ovaria vel uterus vel et hic et illa excisa sunt magnum negotium facessit. Utrum necne illa mulier impotens dici debeat, adhuc controvertitur. Propenditur in partem negativam juxta fere omnes auctores, scii., eam non esse impotentem. Nullum dubium esse potest mulierem excisam concipere non posse si absint ovaria,



parere non posse si absit uterus. In absentia vero tubarum fallopianarum, dum manent ovaria et uterus, conceptio et fetus evolutio sunt possibles quidem, at tam raro et contra omnem spem, ut ille defectus generationi obstare dicendus sit.

Rationes eorum qui putant excisam mulierem non esse impotentem ita proponi solent ex quatuor responsis SS. Cong. S.O. et de Discip. Sacramentorum :

(a) S.O., Feb. 3, 1887, respondit matrimonium non esse impediendum in casu mulieris cui ablata sunt duo ovaria.

(à) S.O., Jul. 23, 1890, respondit in eundem sensum de quadam femina cujus uterus et ovaria excisa sunt.

(i) S.O., Jul. 31, 1895, respondit puellae cui ovaria ablata sunt matrimonium non esse impediendum.

(d) S.G. de Discip. Sacr., Apr. 2, 1907, respondit circa casum feminæ cui uterus et utrumque ovarium totaliter ablata fuerant, dari debere responsum S.O., Jul. 23, 1890, reiZ., matrimonium non esse impediendum. Exinde concluditur ex remissione negotii ad S.G. de Discip. Sacr. materiam fuisse satis discussam, et impotentiam in casu fuisse saltem dubiam, atque propterea matrimonium non esse impediendum. Confirmatio a S.T. Sign. Apostol, June 27, 1931'

9. Difficultas tamen urgetur, *scii.*, quod si vir, utroque testiculo carens, est absolute impotens quia verum semen effundere non potest, a pari, mulierem quæ ovulum femininum suppeditare nequit, quod æque necessarium est ad generationem ac semen virile, impotentem esse dicendam. Maxima disparitas in eo sita est quod in eunucho deficit id, *scii.*, semen, quod datur in copula ut aliquod essenziale in copula conjugali, seu, aliis verbis, copula conjugalis concipi nequit in qua nulla est effusio seminis virilis. In muliere vero, ovulum suppeditare non est de essentia ipsius copulæ, et optimo jure copula haberi potest perfecte conjugalis sine ullo respectu ad ovulationem. Immo, multis in casibus, ut notum est, conceptio locum habet in ipsis tubis fallopianis, si non in superficie ovarii, id quod necessario accidit post longas horas, forte etiam aliquot dies post copulam. Si ergo ovulum esset necessarium in ipsa copula, ut illa vere dicatur copula conjugalis, quam sæpe vera copula conjugalis

non fit. Defectus ergo ovuli, et defectus ovariorum nullo modo afficiunt copulæ veræ essentiam. Ergo non datur paritas inter eunuchum et mulierem excisam quantum ad copulæ conjugalis consummationem.

Iterum responderi potest quod quum Ecclesia judicare debeat de veris matrimoniis, si ovaria essent quid essentiale, de præsentia ovariorum judicare debuit. At hæc est res prorsus abscondita, et per multa saecula ne doctissimi quidem de ovariorum existentia somniabant. Unde valor matrimonii pendere non debebat ex re tam inscrutabili.

Tertio, quum matrimonium ordinem externum respiciat, publica auctoritas judicare facile debet de ejus validitate. Unde illa impotentia, quæ, de jure naturæ, constituit matrimonii impedimentum, innotescere facile debet ex aliquo vitio exteriori. Unde incapacitas externa ad copulam rite peragendam sola censi debet impedimenti constitutiva, non vero incapacitas generandi quæ ex rebus incognitis pendet.

10. Si qui dicant ovariorum et uteri absentiam impedimentum constituere, utpote generationis impeditivam, confundunt impotentiam coeundi et impotentiam generandi quæ semper distinguebantur a doctoribus Ecclesiæ, et in senibus, ante matrimonium, potentia generandi nunquam exquirebatur. Insuper, si impotentia generandi, seu sterilitas esset impedimentum, quam multa matrimonia erant et sunt irrita, dum, e contra, si certa capacitas generandi censeretur esse de essentia matrimonii, vix non omnium matrimoniorum validitas celebrationis tempore esset incerta. Contractus objectum immediatum est jus in corpus alienum ad copulam tantum, non vero ad copulam fructuosam, quia nemo promittere potest quod penitus latet. Præterea si senibus matrimonium permittitur ad mutuum amorem et adjutorium fovendum et ad sedationem concupiscentiæ, et hominibus aliis, quorum numerus immensus est, qui infertiles sunt, cur non etiam mulieri excisæ quæ æque facile matrimonii secundarios fines adipisci et dare potest? Id etiam attendendum, quod copula—immo matrimonium—permittitur mulieri prægnanti, cujus os uteri ita clauditur ut ex copula, prægnatione durante, per se, generatio sequi nequeat.



## 2. De Matrimonio Impotentium

1. Mulier conjugata inepta ad copulam ob arctitudinem vaginæ tenetur incisionem pati cum gravi molestia, nam officia matrimonii sunt certo gravia, non vero cum periculo mortis vel gravis morbi. Probabiliter non tenetur incisionem pati per manum chirurgi si hæc fieret non nisi cum maximo pudore. Matrimonium initum cum arctitudine sanabili validum est, nisi, ante contractum initum mulier nullo in casu voluerit ullum jus marito tradere.

2. Mulier quæ hymen intactum habet tenetur hujus resectionem pati, nam hæc non magnam molestiam secum fert.

3. Si mulier, matrimonio inito, evasit apta per operationem valde periculosam, non erat valide conjuncta ; debet ergo renovare consensum debita forma.

4. Inire matrimonium cum impotentia certa sed temporaria quæ brevi auferri potest non est peccatum ; si diu duratura, debuit compartem monere, secus peccaret ; si perpetua, peccatur graviter si eam siluerit.

5. Si quis init matrimonium cum vere dubia impotentia illicite agit ; si dubium manet post diligentem investigationem licite init matrimonium, admonita tamen altera parte.

6. Matrimonium initum cum certa impotentia, antecedente et perpetua, est nullum, Separatio quoad torum statim facienda est, secus partes aut peccabunt graviter aut periculo proximo peccandi sese exponent ; separatio etiam fiat, si sine scandalo, quoad cohabitationem. Pars potens nequit aliud matrimonium inire sine auctoritatis ecclesiasticæ authentico interventu. Si vero separatio sit impossibilis, nam forte filii nati sunt,<sup>1</sup> permittitur cohabitatio dummodo absit periculum proximum peccandi, sed cum recursum ad Ordinarium. Quandoque pastor potest partes in bona fide relinquere secluso semper publico scandalo.

7. Matrimonium initum cum impotentia temporaria valet et licite possunt compartes copulam perficere conari ;

<sup>1</sup> Ne mirum videatur filios enasci posse ex matrimonio ob impotentiam nullo, nam ita fieri potest juxta antea dicta.



quod si nil proficiant nec ulla sit spes proficiendi, abstinere debent ab omni tactu qui induceret periculum proximum pollutionis. Ceteri actus imperfecti liciti sunt rationabili de causa. At si copula perfecta est impossibilis aut uxori dolorosa, sufficit probabiliter seminis effusio ad os vaginæ. Nunquam vero licet ita agere si plenior copula sit possibilis, ut proles numerosior evitetur.

8. Impotentia consequens nec dirimit matrimonium validum nec propterea juxta satis communem sententiam prohibentur compartes ab omni usu matrimonii.

9. Matrimonium initum cum dubia impotentia habendum est ut validum (c. 1014). Manente dubio licet copulam exercere quantum potest, etsi semen extra vas per accidens fundatur, et licet actus imperfectos exercere justa de causa. Dum frigidity aut caliditate (nimis festinata ejaculatione extra vas) laborat vir, licite perfecte coire conari potest. Dum uxor arctitudine facile sanabili aut vaginismo laborat licet ante operationem coire meliori modo quo possunt conjuges sed saltem ad os vaginæ semen fundendo. At in omni casu impotentiae dubiae remedia adhibenda sunt. Remediis frustra adhibitis, si matrimonii usus est impossibilis, et partes sunt in periculo incontinentiae aut adest scandalum separatio peti debet, vel etiam dissolutio rati matrimonii. Experimentum per tres annos hodiedum non permittitur.

10. Vir qui duplicem vasectomiam est passus valde probabiliter censendus est absolute impotens. In aliquibus casibus vero ille defectus corporis sanari facile potest, et ideo impedimentum non tunc est perpetuum, unde matrimonium a tali iniri potest. In duplici vasectomia vir in vas uxoris semen infundere non potest postquam vesiculae seminales semen in eis contentum evacuaverunt. Nullum semen in eas viam invenire potest. Unde si duplex vasectomia est insanabilis vel si sine periculo vitae vel medio illicito sanari nequit adest impedimentum dirimens. Mulier quæ passa est fallocetomiam non censenda est impotens juxta doctrinam communem.

11. Matrimonium vere consummatur quando conjuges fiunt una caro (Gen. 2, 24 ; 1 Cor. 6, 16). Variæ dantur sententiae de hac consummatione. Praetermissis ceteris

sententiis, hic statuitur consummationem fieri et tunc tantum fieri quando maritus intra vas uxoris naturali modo *scii.*, cum penetratione semen effundit. Hinc (*a*) non fit consummatio per seminationem tantum ad os vaginæ sine ulla penetratione, nec dum hymen imperforatum manet etsi, ut fieri potest in raro casu, inter copulam hymen intactum intruditur in vas quasi esset istud instrumentum quod condom vocatur ; (*/>*) conceptio et generatio non semper sunt vera signa consummationis.<sup>1</sup> (*c*) Prorsus necessaria est aliqua vaginæ penetratio ad matrimonii consummationem, nam sic tantum datur copula carnalis ut conjuges fiant una caro, et tunc tantum habetur actus conjugalis de quo fit contractus. (\*Z) Quum neganda sit vera consummatio matrimonii si vaginæ nulla penetratio facta sit, multo magis deest consummatio juxta communem sententiam in fecundatione artificiali proprie dicta, illa, *scii.*, in qua vir extra vas et extra omnem copulam, semen effundit quod deinde arte in vaginam introducit, vel quando vir permittit semen extrahi ex epididymo (quæ est pars superior testiculi), sed hic modus nunquam a medicis adhibetur, ut aliqui scriptores dixerant. Ideo prior modus pollutionis prorsus illicitus est (S.O., Mart. 24, 1897). Sed fecundatio improprie dicta licita est, ea, *scii.*, in qua maritus vel copulam exercet in vagina artificiose dilatata per instrumentum (dummodo tamen non seminet in ipsum instrumentum cæcum), vel copulam naturalem exercet, semen intra vaginam effundit quod deinde colligitur ope siphunculi et in uterum profundius aspergitur ; sed justa causa requiritur.<sup>2</sup>

12. Consummatio matrimonii præsumitur si conjuges simul cohabitaverint, nisi contrarium probetur (c. 1015, 2).

### SECTION 3. The Impediment of an Existing Bond (c. 1069)

I. One who is still bound by the tie of marriage even not consummated cannot validly contract a second marriage, without prejudice, however, to the privilege which the Faith grants, that is, the privilege known as the Pauline privilege

<sup>1</sup>Cappello, III, n. 381.

<sup>2</sup>Isti duo modi videntur, salvo meliori judicio non prohiberi in Allocutione data medicis a Pp. Pio xii; cf. Appendix 3, p. 411.



in favour of the dissolution of even a consummated marriage between the unbaptized, when, under definite restrictions, one of the parties to such marriage is converted and baptized, the other party remaining unbaptized, and being unwilling to live in peace.

2. This impediment is founded on Natural law and positive divine law. Natural law forbids polyandry' and polygamy ; positive divine law, universal from the beginning, dispensed by God in favour of the Jews, but reasserted and universally re-enacted by Christ in the New Dispensation, forbids a second marriage whilst a former spouse is living and if the bond has not been legitimately dissolved. It is to be observed that even an unconsummated marriage cannot be dissolved by any human authority.

3. Neither ignorance nor mistake can render a second attempted marriage valid if the first persists in point of fact, nor will any lapse of time heal it.

4. To enter upon a second marriage validly, the former marriage must have been null or legitimately dissolved. A consummated marriage is dissolved by the death of one of the parties to it or by the use of the Pauline privilege ; an unconsummated but ratified marriage (of the baptized) is dissolved by death, by solemn religious profession, or by papal dispensation. To enter upon a second marriage lawfully on the ground that the first was invalid, an authentic declaration given by the Holy See or the local Ordinary of the nullity or dissolution of the former marriage is necessary. Moral certainty of freedom to remarry is necessary, and without it, a remarriage, though it might be actually valid, would be grievously sinful.<sup>1</sup>

5. The freedom to remarry can be established by proofs or presumptions. Certain rules have been laid down by the Holy Office (1868). To prove the death of a former spouse, absence, however protracted, is not sufficient. Positive proofs of the death are necessary, and chief of all, an authentic ecclesiastical document or one given by the civil authority of the place where the person is reported to have died. In

<sup>1</sup> If a legal divorce from an invalid marriage has been got, before remarriage the certificate of divorce or its number must be sent to the Ordinary.



place of a document, the authentic testimony of guardian or matron of a hospital, of a military leader, of the master of a ship, of the consul of a town, would suffice if they had the obvious means of knowing. Even private individuals could give sufficient testimony of a death, but two ocular witnesses, trustworthy and under oath, are to be preferred. Even one ocular witness, if absolutely reliable, would be accepted as sufficient if the testimony is borne out by circumstances, or if there is every likelihood of the accuracy of it. Even the testimony of those who have heard of the death may be sufficient, if they are trustworthy and heard of the death when they were not expecting to do so. Finally, when no witness is forthcoming, conjecture and presumption may be sufficient proof of death, such as presumption based on the evidence of persons who knew the supposed dead person, declaring that he was a good husband, loved his wife, had no cause for concealment, had or expected to come into property, that he left home with the approval of wife and relatives, that he corresponded and expressed his intention of returning, that he was, for example, present in such or such a military engagement, or was captured by the enemy, or sent on dangerous enterprises, that if engaged in commerce he undertook a dangerous journey, or was in a place where there were wars, seditions, revolutions, famine, the plague, that if he was on a sea voyage the ship foundered or was lost, and the underwriters paid up the insurance money. Report, too, may be sufficient, if it is substantiated by two sworn trusty witnesses and came from a reliable and unprejudiced source. Even unanswered advertisement in the papers may establish a valid presumption of death.

If all means fail, recourse must be had to the Ordinary, and he may refer the matter to the Holy See. Thus, permission was given to remarry to the presumed widows of the Italian soldiers after Adowa (1898), after the battle of Mukden in the Russo-Japanese War (1910), and after the earthquake of Messina. Each case had to be investigated in accordance with the Instruction of 1868. A case, too, was decided in 1909, two cases in 1914, and the case of Bruno Buttera, who left Italy for Brazil, was not heard of

for twenty years, but whose death was testified to by a fellow-workman, is particularly interesting.<sup>1</sup>

6. When marriage has been contracted, whether in good or in bad faith concerning the death of wife or husband, if it is certainly discovered that the wife or husband is still living, the two parties must separate and the rightful partner is to be taken back, unless, of course, there is a just reason for not doing so in accordance with law (c. 1129). But if the second union was contracted in good faith, so long as the good faith persists, the parties may be left as they are until it becomes certain that the true husband or wife is living. If the second union was contracted in bad faith, no marital relations are permissible. If the dissolution of a former marriage was doubtful, and a second union was contracted in bad faith on both sides, neither party may ask for or give marital dues, but if one party<sup>1</sup> is in good faith, that one may ask and the other must give marital dues. As soon as well-founded doubt as to the validity of a marriage arises in the minds of both parties neither party may ask for or give marital dues.<sup>2</sup>

#### SECTION 4. The Impediment of Disparity of Worship (c. 1070)

##### 1. Baptism in the Catholic Church

The following are considered by theologians to have been baptized in the Catholic Church.

1. Those children committed by their parents or their deputies to a Catholic priest to receive Catholic Baptism.

2. Children committed by their parents or deputies to be baptized in danger of death as Catholics by a non-Catholic minister, with the intention on the part of parents or deputies of aggregating the children to the Catholic Church.

3. Children born of good Catholic parents baptized by a non-Catholic minister by mistake, fraud or deceit, the

<sup>1</sup> Ayrinhac, *Marriage Legislation in the New Code*, p. 147, n.

<sup>1</sup> In doubt as to the validity of the first of two marriages, the second marriage cannot be declared null if the case was settled by process of law; P.C.C.J., Jan. 26, 1947.



parents desiring the children to be baptized by a Catholic priest. The case could arise if a godmother took such a child to a Protestant church by mistake or even deliberately against the wishes of the parents.

4. Children of pagans baptized in danger of death by a Catholic minister, clerical or lay.

5. Children of pagans baptized lawfully by a Catholic outside the danger of death. The lawfulness of such baptism depends on three factors. There must be reasonable hope that the child will be brought up as a Catholic, that at least one of the parents or guardians consents to the baptism, and that, failing the second factor, no parent or guardian exists or if they do, that they have lost the right over the child, or that it cannot be exercised.

6. Children unlawfully baptized by a Catholic outside the danger of death and brought up in the Catholic Faith. If such children were brought up in heresy, schism, infidelity or without religion at all, the matter is disputed.

7. A child, in danger of death, born of Catholic parents, baptized by a person who belongs to the Greek Orthodox Church according to the Greek Orthodox rite, the parents wishing the child to be baptized as a Catholic, asking that it should be so baptized and intending to bring it up as a Catholic.

8. A child in danger of death, born of heretics or schismatics, baptized by a Catholic at the request of the parents, though they wish and intend the child to be aggregated to their own sect.

9. An adult who asks for Catholic Baptism which, however, is given by a non-Catholic in a non-Catholic rite and with the intention of aggregating the baptized to the sect.

10. A child of apostate parents baptized by a Catholic minister at their request, their intention being that their child shall be considered as baptized outside the Catholic Church.

## 2. Extent of the Impediment

Heretics and schismatics on their conversion to the Catholic Faith, and all Catholics who have apostatized,



clearly come under the law and are subject to this impediment.

Those who were born of non-Catholic parents,<sup>1</sup> and who were baptized by a Catholic minister, even if they had been brought up from infancy in heresy or schism or infidelity, or without any religion, are subject to this impediment.

Those who were born of non-Catholic parents<sup>2</sup> and were baptized in danger of death by a Catholic, or apart from that danger, with the consent of either or both of the parents, but have grown up in heresy, schism, or infidelity, or without religion at all, are subject to this impediment when they marry an unbaptized person.

The extent of this impediment has been limited in the new Code as compared with the former legislation. Under the law up to 1918, every baptized person was subject to this impediment. It now does not apply to those baptized in a false religion, so that those baptized as heretics or schismatics and remaining such can now validly marry the unbaptized. The reasons suggested for the change of discipline are that many heretical and schismatic marriages were formerly invalid, and the difficulty is done away with in many cases of pronouncing on the validity of marriages contracted in heresy or schism. Nevertheless, marriages that were contracted before May 19, 1918, have to be judged, as to validity, by the law then in force.

### 3. Nature of the Impediment

As an annulling impediment, this one of difference of worship is ecclesiastical; as a prohibitory impediment, it is one of divine, Natural and positive law, owing to the danger of perversion. The Church has applied the impediment universally, i.e., to all baptized Catholics and converts. Consequently, though in a particular case, the divine law might not forbid a definite marriage, the Ecclesiastical law does forbid it and makes it invalid without dispensation.

<sup>1</sup>The term includes apostate parents; cf. P.C.C.J., July 30, 1934.

\* Including children of apostate parents and children of a mixed marriage where only one parent is a Catholic, even when the guarantees of cc. 1061 and 1071 were given (P.C.C.J.. 1929, 1930).

The impediment affects the Catholic party directly, the unbaptized party indirectly.

#### 4. Cases of doubtful Baptism

Cases arise in which the baptism of one of the contracting parties is doubtful. We have then to distinguish between marriages that are going to be contracted and those that have been contracted, in order to decide whether or not this impediment invalidates the marriage.

##### 1. The case of marriage to be contracted.

If two Catholics intend marriage and a doubt arises as to the baptism of one of them, in order to solve the doubt completely, that one must be baptized conditionally, for the sake of Baptism itself, which is necessary for salvation and for the valid reception of other Sacraments. The same procedure would be the obvious one in the case of a non-Catholic, doubtfully baptized, who wishes to become a Catholic and to marry. It is entirely reprehensible, of course, and could not now happen, that a priest should baptize conditionally a non-Catholic person contemplating marriage with a Catholic, to preclude an invalid marriage owing to defect of baptism where the former wished to remain in heresy. But in regard to the validity of marriage between one baptized and another whose baptism is doubtful, doubtful baptism is to be considered as good as certain baptism in respect of a marriage to be contracted; consequently, though in doubt as to baptism it is to be given conditionally, since it is a means necessary for salvation, still baptism would not have to be repeated conditionally in order that the impediment of difference of worship might not be an obstacle to marriage with a baptized person.

##### 2. The case of marriage already contracted with one doubtfully baptized.

If a person, at the time when marriage was contracted, was commonly held to be baptized, or if the baptism was doubtful, the marriage must be upheld as valid (c. 1014) until the contrary is proved, namely, that one of the parties



is baptized and that the other is not. Law presumes a valid marriage, but the presumption gives way to fact. Consequently, several cases must be here considered :

(a) If two Catholics contract marriage, and thereafter a serious insoluble doubt arises as to the baptism of either or of both parties, baptism must be repeated conditionally, but no prejudice is thereby created against the validity of the marriage. But if, in point of fact, it transpires that one party was baptized and the other not, the marriage has been certainly invalid.

(5) If a baptized Catholic marries a heretic doubtfully baptized in the Church, or if a Catholic doubtfully baptized marries a heretic doubtfully or not at all baptized, the marriage in all three cases is to be upheld as valid, until the contrary is proved. Formerly, under the old discipline, before 1918, a marriage between one doubtfully baptized and one not baptized was considered invalid. But now, the canons establish a presumption in favour of Baptism as well as of marriage, and the presumption in favour of validity of marriage is so strong that a doubtful baptism is regarded as a true baptism till disproved.<sup>1</sup>

(c) In cases of heretics who never belonged to the Church marrying one another, no regard is paid to their baptisms. Their marriages are valid if no impediment is present.

##### 5. Cessation of the Impediment

The impediment, in so far as it is ecclesiastical, ceases if the unbaptized party is converted to the Catholic Faith and is baptized, or is validly baptized otherwise ; also if a dispensation is given. In so far as this impediment is one of divine law, it ceases when the proximate danger of perversion of the Catholic party and the offspring does not and will not exist, and there is grave reason for the marriage ; but the decision on this matter rests solely with competent ecclesiastical authority.

The impediment ceases, but the obligation of the pre-nuptial promises in favour of the Faith remains in places

<sup>1</sup> Cappello, III, n. 419 ; Wernz-Vidal, V, n. 269.



where there are so few Christians that they cannot intermarry, and are unable, without serious inconvenience, owing to distance, to petition for a dispensation. The Natural law in favour of marriage prevails against the ecclesiastical law. A reply of the Holy Office (June 4, 1851) favours this view.<sup>1</sup>

## 6. Dispensation from the Impediment

For legitimate dispensation from the ecclesiastical impediment it is required that all conditions essential to the divine Natural law be fulfilled,<sup>2</sup> that the guarantees exacted for mixed marriages be given, that there is a just and grave canonical reason on the side of the baptized party.

Dispensation from the impediment of difference of worship does not implicitly include dispensation from the relative impediments from which the unbaptized party is exempt.<sup>3</sup> There is only one such implicit dispensation mentioned in the *Codex* (c. 1053), namely, dispensation from the impediment arising from adultery with promise to marry or attempted marriage, when dispensation is given from ratified non-consummated marriage, or when permission is given to remarry after the presumed death of the former consort. Before the promulgation of the *Codex Juris Canonici* (1917), authors held that a dispensation from disparity of worship carried with it dispensation from those impediments from which an unbaptized person was exempt. They held this view in consequence of the reply given by the Congregation of the Holy Office (1824) to the Archbishop of Quebec.<sup>4</sup> Now, however, such implicit dispensation (except from the impediment of crime mentioned above) is not granted together with dispensation from difference of worship. This has been expressly stated by the Holy Office, May 20, 1931.

<sup>1</sup> cf. Gasparri, I, n. 595.

\* Conditions usually expressed by the phrase : “ *Quatenus sine contumelia Creatoris fieri possit.* ”

<sup>3</sup> S.O., May, 1931 ; cf. *Periodica*, Feb., 1932, p. 16.

♦ cf. *Fontes*, IV, p. 146.

## SECTION 5. The Impediment of Sacred Orders (C. 1072)

### 1. Nature of the Impediment

The Sacred Orders which, in the Latin Church, constitute a diriment impediment to attempted marriage are, the episcopate, the priesthood, the diaconate and the subdiaconate (c. 949). This impediment is wholly ecclesiastical and it appears best to say that it is derived immediately from Ecclesiastical law, not from the solemnity of the vow of Orders. Sacred Orders constitute, in the ordained, total incapacity to contract a valid marriage. Secondly, they render sinful the use of marriage that had been contracted before the reception of Sacred Orders, for a married man can legitimately, with dispensation, take Sacred Orders whilst his wife is still living. The obligation of chastity arises from the law of celibacy and chastity (c. 132, 1), and a violation of chastity by the ordained would be a sacrilege. The Church, by the Council of Trent, has defined as of Faith the existence of this diriment impediment (s. 24, c. 9). Clerics in minor orders are not subject to this impediment ; should such a cleric contract marriage, he would cease to belong to the clerical state (c. 132, 2), unless the celebration of marriage had been forced upon him by violence or fear.

### 2. The Solemn Vow

The Church imposes on the ordained a solemn vow of chastity, and violation of the vow, even internal only by, for example, desire or voluntary complacency, would be sacrilegious. A cleric who has received Sacred Orders undertakes to remain celibate and to preserve chastity by virtue of Ecclesiastical law ; if, by some perversity, he should decline internally to bind himself to chastity, he would be bound by the virtue of the law (c. 132, 1), but as his obligation would not arise from a vow, internal sins against chastity would probably not then be sacrilegious. But such a one is bound to change his mind and take the vow ; meantime,



till he does so, he is bound to complete continency. If the cleric accepts all the obligations of his state, he is bound to preserve chastity both by Ecclesiastical law and by virtue of his vow.

### 3. Necessary Conditions

The conditions that Sacred Orders may be a diriment impediment to subsequent marriage are that the Orders received should have been validly received, that they were received freely, that the ordained cleric had a sufficient knowledge of the obligation of refraining from marriage and preserving chastity. The Church does not admit, in the external forum, the absence of this sufficient knowledge in adult Christians duly educated. Nevertheless, if the knowledge were in fact absent, there would be no obligation to preserve celibacy nor would there be any impediment to marriage. Wherefore, if children were unlawfully though validly ordained, they would not be obliged to celibacy nor would they be incapable of contracting marriage, until they had expressly or tacitly ratified their ordination and its annexed obligations, which they should do at latest, when they have completed their sixteenth year.<sup>1</sup>

### 4. Marriage and Orders

A married man whose wife is living cannot receive Sacred Orders without papal dispensation (c. 987, 2) ; if he do receive them without such dispensation, he is forbidden to exercise his Orders (c. 132, 3). Orders received by such impose the obligation of perfect chastity, and children begotten by him after ordination would be sacrilegious offspring and canonically illegitimate (cc. 132, 1114). When dispensation is given to a married man to receive Orders, it is not given without the consent of his wife, nor unless she also takes a vow of chastity.

<sup>1</sup> Wemz-Vidal, V, n. 285, note (51). An opinion based on the age for religious profession and on two Constitutions of Pope Benedict XIV, against Cappello (III, n. 435), who strangely assigns the age of twenty-one, relying on c. 573 (the age for perpetual vows), and c. 975 (the age for subdiaconate).



### 5. Dispensation from the Impediment

A dispensation to marry is not granted by the Holy See to bishops, very rarely to priests,<sup>1</sup> rarely to deacons and subdeacons. General dispensation for revalidation of marriage was given by Pope Julius III for a grave public reason to priests who had married in the reigns of Henry VIII and Edward VI in England, and by Pope Pius VII at the time of the French Revolution to French clerics. Pope Benedict XI permitted a certain priest, who had made his religious profession, to marry in order to resuscitate the failing line of Aragon. In urgent danger of death, dispensation can be given to deacons and subdeacons (cc. 1043-1045). Dispensation is given in cases where the ordained claims that he received Orders under duress, but cannot fully prove his plea. Dispensation is given then *ad cautelam* that such a person may marry after reduction to the lay state and with a prohibition added against the exercise of Orders already received. A major cleric degraded or reduced to the lay state for crime still remains subject to the impediment and cannot validly marry.

### 6. Penalties

The following are the penalties inflicted on major clerics who attempt marriage without dispensation :

1. Excommunication *ipso facto* against both parties

2. Loss of all offices (c. 188, 5).

3. Irregularity (c. 985, 3).

4. Suspension (c. 2359).

5. Degradation if, after admonition, they do not amend within a fixed time (c. 2388, 1). This penalty has to be specifically imposed by competent authority.

<sup>1</sup> Dispensation is granted in the rarest cases to a priest when he has attempted marriage civilly and separation is practically impossible, and in a case when the woman was deceived as to the other's priesthood, and provided there is no danger of the marriage becoming known (Cappello, III, n. 443, note).

SECTION 6. The Impediment of Religious Profession  
(c. 1073)

I. Nature of the Impediment

1. Marriage is invalid when attempted by Religious who are professed of solemn vows, or even of simple vows if, by particular disposition of the Holy See, this annulling force is annexed to simple vows. This impediment to marriage affects Religious of either sex who have taken a solemn vow of chastity or even a simple vow of chastity if such annulling force has been annexed to the latter. That Regulars under solemn vow of chastity cannot marry validly is matter of Catholic Faith, defined by the Council of Trent (s. 24, c. 9).

2. Religious profession is the profession either of solemn or of simple vows. The difference between the effects of the two kinds of profession is stated in the canons (c. 579) ; it is that solemn profession renders acts contrary to the vows invalid, in so far as they can be rendered invalid, but simple profession renders acts contrary to the vow illicit only, unless invalidity is also annexed to such acts. The solemnity of a vow does not issue from any intrinsic characteristic of a vow, but is wholly extrinsic to it and is due to the disposition of the Church, which endorses a solemn vow as solemn, inasmuch as the Church determines the absolute and irrevocable nature of the contract between the Religious Order and its members, and the absolute incapacity of one who takes the vow validly to perform certain acts contrary to it.

3. The simple vows which render subsequent attempted marriage invalid are the vows of chastity taken after the two years' noviciate by Jesuits, a privilege granted by Pope Gregory XIII, Const. *Ascendente Domino*, 1584. Solemn vows are perpetual and are taken only in Religious Orders of men or women ; simple vows, whether temporary or perpetual, are taken in Religious Orders and Congregations.

4. The condition that solemn vow (or the simple vow in the one case stated) may invalidate subsequent attempted marriage is that the vow should have been validly taken. The canons (c. 572) lay down conditions of validity quite



## MARRIAGE

explicitly, a matter dealt with in the treatise on the Religious State.

5. A person still bound by the tie of marriage cannot validly enter the religious state and make a valid noviciate (c. 542). If, by some chance, such a one entered religious life and took the vows without the consent of the other party to the marriage, there would be an obligation of quitting religious life and returning to married life. If dispensation had been given to enter religious life with the consent of the other party to the marriage, and if solemn vows had been taken, subsequent sexual relations with the former partner would be sacrilegious.

### 2. Dispensation from and Cessation of the Impediment

1. Dispensation can be given by the Holy See to a Religious under solemn vow to quit religious life and to be freed from vow. Dispensation is sometimes given so that the person dispensed may contract marriage, but he remains bound by the vow in all matters apart from the lawful use of marriage. Dispensation is sometimes given to one professed of the three solemn vows of poverty, chastity and obedience ; sometimes only the vow of chastity is dispensed, sometimes the other two only, and sometimes commutation only is given. The rescript has to be interpreted strictly, and it usually grants permission for one marriage only, adding a series of penances or other salutary acts to be performed.

2. The same power of dispensing can be exercised by the Ordinary, the parish priest, a priest assisting at a marriage, and a confessor in the circumstances defined in the canons (cc. 1043-1045), i.e., in urgent danger of death for peace of conscience, and legitimation of offspring where this is possible.

3. The impediment of the vow ceases altogether if, with permission of the Holy See, the Religious of solemn profession passes to a Religious Congregation of simple vows, and therein takes simple vows. But though the impediment of the vow ceases, that of Sacred Orders does not, if the Religious has received them.



4. An induit of secularization granted to a Religious frees such a one from the diriment impediment of religious profession, not, of course, from that of Sacred Orders.

5. Where the simple vow of chastity is a diriment impediment to marriage, as in the Society of Jesus, the Superior General can dispense his subjects from the vow. Legitimate dismissal thus frees such a subject from the vow and the impediment, and he could marry licitly and validly, unless, of course, he had received Sacred Orders.

### 3. Penalties

The following penalties are inflicted on those who disregard this impediment :

1. Excommunication, *ipso facto*, is incurred by Religious under solemn vow of chastity who attempt to marry, even civilly, and by those who presume to marry them (c. 2388, 1).

2. Irregularity is also incurred (c. 985, 3).

3. Dismissal from their Order and subjection to all the canonical effects of their conduct (c. 646, 3).

4. The penalties inflicted on Religious in Sacred Orders who take up and continue in a life of concubinage (c. 2359), and other penalties enumerated in section 5.

## SECTION 7. The Impediment of Abduction (c. 1074)

### 1. Nature of the Impediment

The impediment of abduction is thus stated and explained at length in the canons. No marriage can subsist between an abductor and a woman abducted with a view to marriage so long as she remains in the power of the abductor. If, however, after separation from the abductor, and being in a safe and free place, she is willing to have him as husband, the impediment ceases. In respect of the nullity of marriage, the forcible detention of a woman is equivalently abduction, namely, when a man, with a view to marriage, forcibly detains a woman in the place where she is, or to which she has freely gone.

The impediment arises from the forcible abduction or detention of a woman with a view to marriage with her, even if abductor and abducted were mutually engaged.

## 2. Origin of the Impediment

The impediment is ecclesiastical, and as such does not bind the unbaptized ; but abduction of a baptized person always gives rise to the impediment, and also any abduction by a baptized person, for the law binding only one party in abduction gives rise to the impediment between both, as in the impediment of difference of worship.

## 3. Necessary Conditions

The conditions necessary' that the impediment may arise, are :

1. Abduction, or removal from a safe place to a place not safe. The distance between the places is immaterial ; even abduction from one room to another of the same building is sufficient to constitute the impediment, for there would always be detention involved, even if literal abduction were not verified. Consequently, all subtle distinctions of place and place are now irrelevant.

2. Detention, so that the woman cannot freely depart to another place where she will have her liberty. Detention by moral force is sufficient, and even detention in the home of the woman.

3. Abduction or detention must be forcible, that is, contrary to the free will of the woman in respect of marriage, and this duress could be exercised by deceit or fraud, in order to induce her to go freely from place to place ; the impediment would exist if the woman did not know marriage was in view when she was induced by fraud or deceit to go from one place to another. The impediment exists if the woman is abducted or detained by duress or fear, though her parents consent to it. The impediment does not exist, if the woman, being a minor and still subject to her parents, willingly goes with the man against the will of her parents.

4. The impediment arises in the case of any woman, though in that of one of loose morals, abduction would have to be proved. It could also arise in the case of a man's betrothed abducted by himself or on his behalf.

5. The abduction or detention need not be due to the

action of the abductor himself. If one person is guilty of the abduction at the request and on behalf of another, the latter is subject to impediment. If, however, one performed the service for another, without the other's request, the impediment would not arise between the woman and either of the others.

6. Abduction or detention must take place with a view to marriage ; no other motive would suffice.

7. The impediment subsists so long as the woman is in the power of the man. She must, therefore, actually go to some other place where she is beyond the power of the abductor or his agents that the impediment may cease.

8. So long as the woman remains in the power of the man she cannot legally and validly consent to marriage, even though she freely wish to do so. This would be undeniably true where even one only of the two parties is baptized. It would not be so, if both parties were unbaptized, prescind- ing from civil law.

#### 4. Cessation of and Dispensation from the Impediment

The impediment ceases so soon as the woman is separated from the abductor and set in a safe and free place (c. 1074). It ceases also by dispensation, but dispensation is of no avail unless the woman, being still in durance, freely consents to the marriage.

### SECTION 8. The Impediment of Crime (c. 1075)

#### 1. Nature of the Impediment

1. This impediment affects those who are accomplices in adultery or murder of consort with certain limitations. It affects the accomplices only and is an ecclesiastical impediment.

2. The impediment of crime may arise in any one of three ways :

(a) By reason of adultery with an added promise of subsequent marriage, whether the promise precedes or succeeds the adultery, provided that, if it precedes, it is not effectually and externally withdrawn before the adultery. Both the



adultery must have been committed and promise of marriage given whilst the marriage bond of at least one of the adulterers subsists. That the impediment may arise, the adultery must be consummated, that is, by true natural sexual intercourse ; it must be true adultery, that is, at least one of the parties must be still bound by a real objective marriage tie ; it must be formal adultery on both sides, that is, each must know that the sin is that of adultery in this sense that both know that the adultery is contrary to the marital fidelity of at least one of them. Consequently, if a married man commits adultery with a married woman and both promise subsequent marriage to one another, the impediment does not arise if neither knew of the married state of the other ; it would arise, however, if either knew of the married state of the other. Where the two parties to the sin add a promise to marry, but doubt about the death of the consort of one—one party only being married—the doubt does not prevent the impediment from arising, for a person is presumed to be still living until death is proved.

The promise to marry must be a definite and specific promise, not fictitious (but fiction must be proved in the external forum that the impediment may not be urged), free from grave fear, deceit, fraud and substantial error, externally manifested by each to the other, and accepted by each absolutely and unconditionally. The promise to marry must be a promise to contract a valid marriage and therefore to marry when free to marry.

It is probable that the impediment does not arise if one party not being married, and not knowing that the other party is married, promises marriage, and subsequently, on learning of the marriage tie, commits adultery with that person without renewing the promise.

The impediment similarly arises by reason of adultery combined with attempted marriage, both acts being contrary to the rights of one definite consort (*stante eodem conjugio*). The adultery must be as explained above. The attempt to marry must be as real as though the parties were being married in fact, and it may be in presence of priest and witnesses, or in a non-Catholic church, or with civil formal-

ties only (c. 1075, 1)> or by private act only even though other impediments exist, so that mere concubinage would not of itself be equivalent to attempted marriage unless in that state the parties express mutual conjugal consent, or unless that state connotes a promise to marry, regard being paid to locality. In the external forum, concubinage is equivalent to attempted marriage unless the contrary is evident. Furthermore, each party must be aware of one and the same existing marriage bond, though it is quite sufficient if the party, hitherto ignorant of the other's marital bond, on discovering the fact continues to cohabit as though a consort, does not withdraw the consent already given, and commits formal adultery. All who, being still validly married, obtain a civil divorce and attempt a second marriage civilly and consummate it, incur this impediment.

(Z>) The impediment arises, secondly, by reason of adultery joined with murder of consort.

The adultery must be as stated, and must be formally an act of injustice to the consort murdered. The murder need be committed by one party only, without mutual conspiracy or help ; it is irrelevant which of two consorts (if both adulterers are married) is murdered, and whether it was by physical or moral means. The murder must be that of a true valid consort, not of a putative one. It must also have been committed with murderous intent, not in a sudden frenzy of passion. The death must have ensued directly and effectually from the physical or moral means employed. In the murder, the motive must be marriage with the accomplice in adultery. This intention is not required in both adulterers. It is not certain that the intention of marriage need be manifested by the murderer to the accomplice in adultery, but the intention of marrying that accomplice and not another person is absolutely necessary. Thus, Titius by committing adultery with Bertha and murdering his wife that he might marry Caia is not subject to the impediment. The murder and adultery must both be offences against one and the same consort. Thus, if Titius commits adultery with Bertha, and on the death of his wife marries Caia whom he kills to marry Bertha, he



is not subject to the impediment. If adultery is committed after physical means have been set in motion for the murder but before the actual death takes place, it is probable, but not certain, that the impediment arises.

(c) The impediment arises, thirdly, by reason of murder of consort alone. That it may arise from murder alone, it is necessary' that the consort should have been murdered, not another person by mistake, that the consort should have been a true and valid not merely a putative consort, that death should ensue from true mutual deliberate co-operation between the two who intend to marry. This co-operation may be physical or moral and must be effectual, so that subsequent approval by one is not co-operation, but an accessory' before the fact may well influence the principal agent ; if he or she does so, there is moral co-operation. Furthermore, the murder must have been committed with the intention of marrying the accomplice, but it is not certain that each accomplice should intend to marry the other ; probably the intention on the part of one is sufficient for the impediment to arise, but co-operation in murder and the intention in one party to marry the other should, it appears, be penalized by any law that purports to safeguard existing marriage and to help married persons to be faithful. It is also disputed whether or not the intention of marriage should be manifested externally. In such doubt, the impediment cannot be urged.

3. It is obvious that this impediment of crime may be virtually multiple, especially when both accomplices are married. In petitioning for dispensation from the impediment all relevant circumstances must be mentioned in case there should be a double impediment to be dispensed.

## 2. Origin of the Impediment

Since this impediment arises from Ecclesiastical law, it does not directly affect the unbaptized, but a baptized person committing adultery with, and promising marriage to, an unbaptized person is subject to the impediment. Since pagans are not subject to this impediment, their conversion to the Faith does not act retrospectively. If one accomplice



in adultery is baptized and the other not baptized, if the latter murdered his consort without the knowledge of the former with intention to marry her, the impediment does not arise since he is not subject to it, and the baptized party did not commit nor co-operate in the murder. The case would be changed if the baptized person had committed the murder after adultery with the unbaptized person.

### 3. Ignorance of the Impediment

Ignorance of this impediment does not exempt from its incidence. The impediment is an incapacitating law (c. 16) not a penalty. But if it were a penalty, it would be a vindicatory one, and would still be incurred in spite of ignorance (c. 2229, 3, 1).

### 4. Cessation of and Dispensation from the Impediment

This impediment cannot cease by lapse of time. The persons are permanently precluded from marrying one another. But the Church can dispense in its own law. It does not dispense in it when the murder has been public. When it has been occult, the Church sometimes does dispense but only for the gravest reason. When the impediment arises from adultery and promise of marriage or attempted marriage, the Church dispenses with less difficulty if the impediment is occult, with greater difficulty if it is public. When a dispensation is granted from an unconsummated marriage and permission to marry again is given, it always includes a dispensation from the impediment, should it exist, arising from adultery and promise of or attempted marriage, if the dispensation was Apostolic (*Fontes*, 2106). Dispensation may be given in danger of death by the local Ordinary and others in accordance with the canons (cc. 1043-1045).

## SECTION 9. The Impediment of Consanguinity (c. 1076)

### 1. Definition

This impediment to marriage exists between certain persons related to one another by carnal descent. It is, therefore,

not an absolute impediment such as age, vow, Sacred Orders, but it is relative.

Consanguinity, being relationship by blood, is as much present in extra-conjugal as in conjugal generation, and natural offspring are related just as are legitimate offspring.

The parents common to two or more persons as, father, mother, are called the root (*stirps*) or trunk, stock (*stipes*) of the descendants. The line is called direct if we consider generation of children from parents. The Une is called collateral in the case of persons having a common parent or ancestor, but not being descended from one another. A son is in the direct line in respect of his father, brothers are in the collateral line in respect of one another. Between son and father there is one generation ; they are therefore related in the first degree of the direct descent or line. Consequently, the number of degrees in the direct line is reckoned by the number of generations. Brothers are descended by one generation from their common parents ; they are, therefore, in the first collateral degree in respect of one another.

Thus, in Table I :

Table I

A and F are related in the third degree of consanguinity in the direct line, as also are A and G.

D and E are related in the second degree in the collateral line, and their direct degrees from A are equal.

D and G are related in the third degree in the collateral line, but their direct degrees from A are unequal.

Consequently, in order to determine the degree of relation-

ship between two persons tracing their origin to a common ancestor, the following rules are given :

1. In the direct line, the number of degrees is the same as the number of generations between the two persons.
2. In the collateral line, when direct degrees are equal, the collateral degree is the number of generations in either line of descent.
3. In the collateral line, when the direct degrees are not equal, the collateral degree is the number of generations in the longer line of descent.
4. For more precise determination, when the collateral degree is sought, as between uncle and niece, the degree is said to be the second degree touching or mixed with the first, for the uncle of a girl is only one generation or degree removed from his own father and the girl's grandfather.

Throughout, the method of computation used in Canon law is here adopted. In some modern States, the computation is according to Roman law.

## 2. Multiple Consanguinity

When near relatives marry, their offspring are related in multiple consanguinity. Thus in Table II :

Table II

B (uncle) marries E (niece) ; their offspring are F, G. These latter are related in the first degree collateral through their father and mother, and also in the third degree collateral in reference to A through their mother (E) and in the second degree collateral through their father (B). In the present discipline of the Church, consanguinity as an



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impediment is reckoned as multiple only when the common stock is multiple (c. 1076).

Thus, there are three ways in which the impediment may be multiple :

i. When E marries F, a cousin, their offspring is related to collaterals in a multiple degree, as in Table III :

Table III

## H

G and H are blood relations in the second degree through their common stock B and in the third degree through their common stock A.

2. When D has offspring by B and G, who are blood relations. Thus in Table IV :

Table IV

D has married two brothers B and C. The grandchild F of B and D is related to the grandchild II of C and D in both the second and third degrees, through D and A their two common stocks.

3. When B and C (as in Tabic V) being blood relations marry E and F, also blood relations to one another, their oflspring are related in multiple degrees. Thus :

T a b l e V

B and G brothers marry E and F sisters. H is related to K doubly in the third degree owing to their double common stocks A and D.  
Other examples of consanguinity<sup>1</sup>:

T a b l e VI

B  
  
F

H and K are in the third degree of collateral consanguinity. They marry with dispensation. Their son M wishes to marry G. They are related in the third degree through H, and in the fourth through K.

<sup>1</sup> cf. Aertnys-Damen, II, n. 754.

Table VII

G and D marry with dispensation. They are in the second collateral degree touching the first. J wishes to marry F. These are in the second collateral degree by the ascent F, B, A ; again in the second degree by the ascent J, D, A ;

wishes to marry K, they are in the second degree by the ascent H, E, A ; and in the third by the ascent K, F, B, A ; and in the third by the ascent K, J, D, A.

Table VIII

B

M

H is not related to A by descent, J and K his sons marry two women D and F who are first cousins to one another. L wishes to marry M. They are related in the second degree through their respective fathers J and K ; and in the third degree through their respective mothers D and F.



## Table IX

A, a widower, whose son is G, married B, a widow, whose daughter is D. Their offspring is E.

C marries D. Their offspring is F.

F is related to E twice in the second degree mixed with the first, namely, by the ascents C, A, and D, B ; mixed with the first, because E is only one degree removed from the two stocks of F.

### 3. Extent of the Impediment

1.The impediment extends to all blood relations in the direct line, whether they are legitimate descendants or natural.

2.In the collateral line, it extends to all who are related in any degree up to the third inclusive, but not if they are related in a more distant degree, as the fourth mixed with a nearer degree. Thus : Table X

B married G, his niece, with dispensation. The descendants of the marriage are H, K. By a former wife, B had descendants, D, E, F, L. L and K are related in the fourth collateral degree through B, and the second collateral degree through B and G.

4. Origin of the Impediment

The impediment to marriage between those related in the direct line in the first degree (father, daughter, mother, son) arises from Natural law, in consequence of the reverence due to parents and the primary purpose of marriage, namely, birth and upbringing of offspring. This fact is universally admitted.

Marriage with remoter descendants (grandfather, granddaughter) in the direct line is more probably against Natural law. This view appears to be endorsed by canon 1076, 3, which forbids marriage between persons who may be related in the direct line.

Marriage between brother and sister is probably invalid by Natural law, except when it was absolutely necessary for the propagation of the race. Consequently, the canons state that dispensation for marriage between brother and sister is never to be granted.

Marriage between persons not in the direct line of descent, but related in certain remoter degrees than the first collateral is invalid only by ecclesiastical law.

5. Impediment pre-Code and post-Code

<i>Pre-Code</i>	<i>Post-Code</i>
1. Indefinitely in the direct line.	I. The same.
2.Extended to fourth degree of collateral consanguinity.	2.Extends only to the third degree of collateral consanguinity.
3. Multiple by reason both of plurality of common stocks and of plurality of lines of descent from the same origin.	3. Multiple only by reason of plurality of common stocks.

6. Reasons for the Impediment

The impediment is established by nature itself and by the Church because there is a certain reverence due to

parents and relatives which is opposed to sexual intercourse between them even in marriage ; the purity of morals requires that near relations should not think of marriage, else their daily conversation with one another would lead to promiscuous immorality ; friendship and love of mankind are extended by marriage outside the circle of relatives ; healthy offspring requires accession of new blood, and inter-marriage between close relatives produces infertility and insanity. The Sacred Congregation of the Sacraments (Aug. i, 1931) deplored the frequency with which dispensations for marriage between uncle and niece, or nephew and aunt were sought. The Congregation stated that it did not consider *angustia loci, ætas superadulta mulieris, carentia dotis*, and the like to be sufficient unless they are cumulative. Instructions are given as to the manner of making petition for such dispensations. Antonelli has pointed out that statistics prove the very unsatisfactory condition of offspring from such unions. A long list of diseases, including mental deficiency, is given.<sup>1</sup>

#### 7. Dispensation from the Impediment

The Church never dispenses in the direct line nor in the first degree of the collateral line, nor when there is doubt as to such close relationship (c. 1076). In the degrees in which the impediment is ecclesiastical, the Church dispenses, but in the closer collateral relationship only for very grave reasons. The Council of Trent wished that no dispensation should be given to persons related in the second degree of collateral consanguinity, except to great princes and for a public reason, but the Holy See has granted dispensations in this degree for good private reasons. Consanguinity in the third collateral degree (children of first cousins) is an impediment more easily dispensed. Blood relations who cannot, by church law, marry, commit incest if they attempt marriage and consummate it. Incest is visited by canonical penalties (c. 2357) ; the persons become infamous in law, and are liable to other penalties ; they are

<sup>1</sup> *Med. Past.*, II, n. 733 (ed. 1909).



158 MARRIAGE

also excluded from all legitimate ecclesiastical acts until they repent. Clerics who attempt such marriages are visited with graver penalties (c. 2359, 2).

Note on Prohibited Degrees

In English law, the table of prohibited degrees, referred to in the Statute of 1835, is adopted from the Canon of the English Church of 1603, as given in the Prayer Book.<sup>1</sup> Consequently, when the names for marriage are put up in the registrar's office, the relationship, if any, between the parties, should be clearly revealed, for all such marriages within the said degrees are void, except that between a widower and his deceased wife's sister, made valid in law by an Act of 1907. Marriage between a man and his deceased brother's widow was made valid also (11 and 12 George V, c. 24). It is not lawful, however, for a man to marry the sister of his divorced wife, or of his wife by whom he has been divorced, during the lifetime of such wife. The title 'sister' includes a sister of the half-blood. Catholics would, of course, first inquire whether they could marry validly and licitly according to the law of the Church, and to that end, relationship, if any, between those who intend to marry should be revealed to the parish priest in the first instance.

SECTION 10. The Impediment of Affinity (c. 1077)

1. Definition

Affinity is relationship by marriage. It arises from a valid marriage between two baptized persons, consummated or not, and exists as an impediment to subsequent marriage between a man and certain blood relations of his wife, and vice-versa. Hence, the blood relations of a man have no affinity with the blood relations of his wife. The impediment arises between one person and the blood relations of another without limit in the direct line, and to the second collateral degree inclusive.

<sup>1</sup> The table of prohibited degrees was set forth by authority in the year 1563. A relic of Catholic teaching is preserved in canon 99 of the canons of 1604, in that marriages within prohibited degrees are declared incestuous, unlawful, and void (*Constitutions and Canons Ecclesiastical*, 1604, with Notes by J. V. Bullard).



## 3. Origin of the Impediment

All impediments of affinity have their origin in purely Ecclesiastical law. There was considerable controversy in this matter, especially in respect of affinity in the direct line, amongst the older canonists. But it was formerly maintained by many theologians, and is now the common opinion, that all affinity arises from Ecclesiastical law. The apparent exception occurs in canon 1043, where the Ordinary has not the power *de jure* to dispense in affinity in the direct line after marriage has been consummated. That the impediment is not one of Natural law is evident from the fact that the Church has given dispensations from every grade of this impediment, and the Holy Office (Sept. 4, 1743) has declared that the Supreme Pontiff has this power. Marriage between a man and his deceased wife's daughter by a former marriage is not contrary to Natural law.<sup>1</sup> That affinity in the first collateral degree after consummation was an impediment of divine law and beyond the power of the Pope to dispense was maintained by King Henry VIII and his advisers, when they impugned the validity of his marriage with Catherine of Aragon, the widow of his brother Arthur.

The unbaptized who marry among themselves are not affected by this impediment so long as both parties remain unbaptized. When both parties to a legitimate marriage are baptized, their marriage becomes a Christian marriage, and is therefore susceptible to this canonical impediment. Each party would, therefore, contract affinity with the blood relations of the other.

When only one of the two is baptized the canonical affinity probably does not arise ; whether or not it arises, when a marriage is contracted between a baptized and an unbaptized person with dispensation from disparity of worship, is not clear.<sup>2</sup>

<sup>1</sup> Cappello, III, n. 537.

<sup>2</sup> Wemz-Vidal, V, n. 367 ; Cappello, III, n. 538 ; in both places the controversy is set forth at length. In the text above, the conclusion of Cappello is adopted as at least probable.



4. Impediment pre-Code and post-Code

*Pre-Code*

1. Arose from sexual intercourse, licit and illicit.
2. From licit intercourse (marriage) the impediment extended indefinitely in the direct line, and to fourth degree collateral inclusive.
3. From illicit intercourse the impediment extended to the second degree collateral inclusive.
4. From marriage unconsummated the impediment of public propriety arose.
5. A husband guilty of incest contracted affinity with his wife, and therefore lost the right to marital intercourse.
6. Affinity could be multiplied from four sources.

*Post-Code*

1. Arises only from valid marriage.
2. The impediment extends indefinitely in the direct line, and to the second degree collateral.
3. From illicit intercourse no affinity arises.
4. From marriage, affinity arises, but not the impediment of public propriety.
5. This affinity does not now arise.
6. It is now multiplied from two sources only.

5. Cessation of and Dispensation from the Impediment

Since affinity is, of its nature, a permanent relationship, it does not cease on the death of either of the two married persons, nor after civil divorce ; it extends also to collaterals born after the marriage. Formerly, the impediment of affinity in the first degree of the direct line was thought by many to be an impediment of Natural law and therefore dispensation was never given, though it was not denied that it could be granted. Dispensation is not usually given in this impediment, though a few cases are quoted in recent years when it was granted.<sup>1</sup> In rescripts granting the dispensation, a clause is added to preclude marriage between

<sup>1</sup> Chelodi, Vlaming, Vermcersch, Ferreres *apud* Wenz-Vidal, V, n. 370, note (59).

father and daughter (mother and son).<sup>1</sup> In collateral degrees of affinity, dispensation is more readily granted for good and sufficient reasons.

#### SECTION 11. The Impediment of Public Propriety (c. 1078)

##### 1. Nature of the Impediment

The impediment of public propriety arises from the relationship between two persons who have been invalidly married or who live in public or notorious concubinage, and the impediment to marriage exists between each of these two and certain blood relations of the other (c. 1078).

The impediment does not affect the unbaptized. If both parties become converts and are baptized, the impediment will affect them if they continue their invalid marriage or concubinage. If one party only is baptized, and the state of their life continues, it is not certain that the impediment exists ; if their state of life was discontinued before Baptism the impediment does not exist.

##### 2. Origin and Extent of the Impediment

This is an ecclesiastical impediment invalidating marriage between either party to an invalid marriage or a life of concubinage and the blood relations of the other party in the first and second degrees of the direct line. Thus :

#### E

F has married C, the widow of G, invalidly or is living with her in public or notorious concubinage. He cannot

<sup>1</sup> “ Dummodo copula matris non antecesserit nativitatem filiæ ” ; “ Dummodo nullum subsit dubium quod conjux possit esse proles ab altero contrahentium genita.”

validly marry, without dispensation, A, B, D or E, the two latter being daughter and granddaughter respectively of G by previous marriage of G with G.

### 3. Nature of the invalid Marriage

The invalid marriage that gives rise to this impediment may be invalid by reason of any diriment impediment or defect of canonical form of celebration. It is irrelevant whether the invalid marriage is consummated or not, whether contracted in good faith or not, so that even a putative marriage gives rise to the impediment. It arises, therefore, by reason of any diriment impediment, even from want of true and sufficient consent in marrying,<sup>1</sup> but if the defect of consent was wholly occult, so long as the marriage appears valid in the external forum, the impediment of affinity, not of public propriety, exists in the external forum.

If the invalid marriage has been a civil marriage only, and for that reason invalid (though it is not always for that reason invalid), the impediment of public propriety does not arise, prescinding from subsequent public concubinage,<sup>2</sup> for a civil marriage, where invalid, is not recognized by the Church to have even the semblance of a Christian marriage, and consequently is not styled an invalid marriage.<sup>3</sup> If, however, public or notorious concubinage succeeds a civil marriage, the impediment arises on that ground.

### 4. Nature of the Concubinage

The concubinage that gives rise to this impediment is such concubinage as is engaged in mutually between two persons, not, therefore, promiscuous sexual irregularities, but concubinage with a certain permanence as though the two were man and wife, excluding, therefore, intermittent fornications with the same or different persons. But life in the same house is not necessary for concubinage since a

<sup>1</sup> This is, however, denied by a few authors ; it is doubted by Wernz-Vidal, V, n. 376, but the commoner opinion is as stated.

<sup>1</sup> P.C.C.J., in c. 1078, March 12, 1929.

<sup>3</sup> An invalid civil marriage sometimes has its own title, such as *matrimonium attentatum*, *civilis actus* (cc. 985, 1075, 2388). It is not putative; P.C.C.J., Jan. 26, 1949.



man can keep his mistress elsewhere, nor is frequent and public resort to prostitutes true concubinage. The concubinage must also be public, that is, a fact that is commonly known or can be and should easily become commonly known ; it is notorious if it is admitted in the Courts or cannot be concealed. The concubinage is not public or notorious in the case of two persons who are commonly thought to be man and wife by their neighbours, for though they live in material and objective concubinage, it is not publicly known as such. The impediment is, therefore, doubtful in such a case.<sup>1</sup>

#### 5. Impediment pre-Code and post-Code

##### *Pre-Code*

1. The impediment arose from valid, absolute and indubitable betrothal, after April 19, 1908, duly signed and attested.

2. The impediment arose from marriage, valid or not, and unconsummated, and celebrated unconditionally, but not if it was invalid from defect of consent.

3. The extension of the impediment was to the first degree, direct or collateral, if it arose from betrothal ; if from marriage, valid or not, to the fourth degree inclusive, in both direct and collateral lines.

##### *Post-Code*

I. Betrothal does not now give rise to it.

2. The impediment arises from an invalid marriage or concubinage.

3. The extension of the impediment now is to the second degree of the direct line, whether the invalid marriage was consummated or not.

#### 6. Cessation of and Dispensation from the Impediment

This impediment is, of its nature, permanent and persists even after the state of invalid marriage or concubinage has

<sup>1</sup> cf. Wernz-Vidal, V, n. 378, note <sup>2</sup>) *contra* Cappello, III, n. 544.

ceased. The impediment is dispensable, but so far as the first degree of the direct line is concerned, it would be dispensed only for a grave reason and provided that it is certain that one party to the proposed marriage is not the child of the other (c. 1076, 3).

SECTION 12. The Impediment of Spiritual Relationship  
(c. 1079)

1. Nature of the Impediment

This impediment arises now from Baptism only, solemn or private, and is a diriment impediment to marriage between (a) the baptizer and the baptized, (b) the godparent and the baptized (c. 1079). The impediment is one of Ecclesiastical law only.

2. Necessary Conditions

That the impediment may arise, certain conditions are necessary :

1. The actual baptism must have been administered, so that one who acts as sponsor only during the ceremonies that are supplied, these having been omitted during baptism, does not contract the spiritual relationship (c. 762, 2). When baptism is given conditionally or repeated conditionally, the sponsor who was present during the former baptism, does not contract spiritual relationship, nor the sponsor at the second baptism, unless one and the same was sponsor at both (c. 763, 2). If the same minister baptized in both baptisms, the impediment will arise between him and the baptized ; if different ministers baptized, it is disputed whether or not the impediment arises.<sup>1</sup> If an unbaptized person baptized, no impediment between him and the baptized person arises, not even if the former is converted to the Faith and baptized.

2. The baptizer should have been himself baptized.

3. The sponsor should have acted validly. That he may do so he must be baptized, have the use of reason, have the intention of being sponsor, not be a member of an heretical or schismatic sect, nor excommunicated by condemnatory

<sup>1</sup> Weraz-Vidal, V, n. 395.

nor declaratory sentence, nor infamous in law, nor excluded from legitimate acts, nor be a deposed or degraded cleric. The sponsor must not be father, mother, or consort of the baptized, must have been nominated by the baptized or the parents or guardians of the baptized, or in their default, by the minister of baptism, finally, must either, in the act of baptism, personally or by proxy, hold or touch the baptized, or immediately after baptism take or receive the baptized from the font or from the hands of the baptizer.

It was very' doubtful whether or not under pre-Code discipline parents ever lost the right of giving or asking marriage dues because they had baptized or stood godparent for their own ofispring. They do not lose that right under present discipline. But not even in danger of death should parents baptize their own offspring if there is anyone else present who can do so (c. 742).

3. Impediment pre-Code and post-Code

<i>Pre-Code</i>	<i>Post-Code</i>
1. The impediment arose from both Baptism and Confirmation.	It arises now only from Baptism.
2. The impediment arose between minister and subject, sponsor and subject, sponsor and parents of subject, minister and parents of subject.	2. It arises now only between minister and subject, sponsor and subject.

4. Cessation of and Dispensation from the Impediment

The impediment is, of its nature, permanent, but dispensation is easily given. The impediment, if subsisting between two persons before the Code, did not cease to exist between them after the pubheation of the Code.

SECTION 13. The Impediment of Legal Adoption  
(cc. 1059, 1080)

This impediment renders marriage invalid or illicit in accordance with the civil code of the country, but the force

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of the impediment is derived for the baptized entirely from Ecclesiastical law, though the extent of it, determined by civil law, is accepted by the Church.

In England, the Adoption of Children Act, 1926, makes no reference to marriage, and therefore the Act does not render marriage between adopter and adopted void. It has been stated by jurists that marriage is forbidden, but this does not appear to have been the intention of the legislature, and such intention was repudiated by the Committee on whose report the Act was based. So far (1934) there has been no authentic pronouncement on the question. Section 4 of the Act states that the Court may impose such terms and conditions as it may think fit, so that the Court in an Adoption Order might rule out marriage. Therefore, legal adoption is not at present either a diriment or a prohibitory impediment in this country. It appears likely, however, that an Adoption Order would rule out marriage since Section 5 (1) of the Act rules that the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock. The adopter must be (a) twenty-five years old, (Z>) twenty-one years older than the infant (unless the adopter and infant are within the prohibited degrees of consanguinity), (c) resident and domiciled in England or Wales.

## CHAPTER XIII

### DISPENSATION FROM MATRIMONIAL IMPEDIMENTS (cc. 1043-1057)

#### SECTION 1. Dispensation in General

##### 1. Definition

**D**ispensation is the relaxation of law in a particular case. Dispensation from a matrimonial impediment is the relaxation of an ecclesiastical impediment or of a law annulling or prohibiting a marriage, granted in a particular case by the legislator or by one who has received the power of doing so from the legislator.

Dispensation *ante factum* is granted for contracting marriage ; *postfactum* for convalidating an invalid marriage. Dispensation in the external forum affects public impediments and is valid in the Courts and in conscience. Dispensation in the internal forum affects occult impediments and is valid in conscience, and if granted outside confession no further dispensation is necessary even if the impediment should become public ; if granted in the sacramental forum, a dispensation in the external forum is necessary.

Dispensation is given *in forma gratiosa* if granted directly to the petitioner ; *in forma commissoria*, if an intermediary is used to execute the dispensation.

##### 2. Papal Dispensation

Since the right of constituting matrimonial impediments is now restricted to the Roman Pontiff (c. 1038, 2), he alone has the supreme and universal power to dispense from all ecclesiastical impediments. Others can dispense only if given faculty to do so by common law or special papal induit (c. 1040). The Pope cannot dispense from impediments that are due to Natural or absolute divine positive law that does not in any way depend on a free act of the human will, as in a vow. Therefore the Pope cannot dispense from impotence, bond of consummated marriage

amongst the baptized, blood relationship in the first degree of the direct line. Nor can he dispense, in respect of necessary matrimonial consent, from defect of reason, substantial error, violence, unfulfilled conditions or conditions contrary to the essence of marriage, or fictitious consent. But he can dispense from vows, oaths, betrothal, unconsummated marriage. In these cases, he withdraws the subject-matter of vow or contract ; that is, in God's name, he remits the obligation of, v.g., a vow or promise, not dispensing from the obligation of keeping vows, but declaring authoritatively that the obligation ceases to exist in such or such a particular matter. Thus, in human affairs, one man may remit the debt of another or accept a composition. Therefore the Pope dispenses in a divine right that had been acquired by vow, for if some men can forgive sins, which are debts to God, they can also forgive the debt of a promise to God. Thus, too, as civil law voids certain contracts, the Church can void the contract of an unconsummated marriage of the baptized. In both cases, the law of Nature is not dispensed, but the law of Nature cedes its right of securing private good to the common good.<sup>1</sup> It cannot, of course, be analogously said that the State can dissolve either Christian or pagan marriages, because there is no evidence at all nor any proof that God gave such power to the State. On the other hand, the Pope is the Vicar of Christ.

During the vacancy of the papal See certain Congregations retain their power of dispensation, explicitly given to them by papal Constitutions.

### 3. Powers of Local Ordinaries to dispense

I. The term local Ordinary includes, besides the bishop of the diocese, the vicar general, Vicar Capitular, Apostolic Administrator, abbot or prelate *nullius*, Vicar or Prefect Apostolic, Cathedral Chapter before the election of the Vicar Capitular. These dispense either by virtue of their ordinary power or by delegated power from the bans of marriage.

<sup>1</sup> Suarez, *de Leg.*, II, c. 14, nn. 6, 20 : cited by Cappello, III, n. 223.



2. They can dispense from impediments that are doubtful in fact from which the Pope is accustomed to dispense (c. 15). If, later, the impediment is found to have certainly existed, the dispensation is valid. Additional power is given by canon 81.

3. They can dispense from vows not reserved to the Holy See, provided that the dispensation does not prejudice rights acquired by others ; this power extends to all subjects within or without the diocese, and to strangers in the diocese (c. 1313). They cannot dispense from vows reserved to the Holy See, nor deacons or subdeacons from celibacy.

4. In urgent danger of death they can dispense, for the sake of peace of conscience of the parties and for legitimating offspring, if the case admits of legitimation, from the canonical form of marriage celebration (the presence of authorized priest and two witnesses), and from all and every ecclesiastical impediment, whether public or occult, and even if multiple, except the impediments arising from the priesthood and affinity in the direct line if marriage has been consummated. This power of dispensing they can use for their own subjects wherever these may be, and for all persons actually staying in the territory of the local Ordinary, but in dispensing, any scandal that has arisen must be removed, and the usual guarantees must be exacted.<sup>1</sup>

The danger of death may be understood as due to any cause whatever, and the person in such danger need not be the one directly affected by the impediment, v.g., of vow, nor need the parties be living in actual concubinage or in a state of invalid marriage. Peace of conscience would extend to the desire of one or both of the parties to have their reputation restored. The offspring to be legitimated may be a natural child or one begotten of incest, or even adulterous or sacrilegious.

If the impediment is public, the fact of dispensation given should be published. If the guarantees usually exacted in a mixed marriage are not given or not exacted, the dispensation is certainly invalid. The same is true of a

<sup>1</sup> S.O., Jan. 14, 1932; Dec. 10, 1902 ; Nov. 15, 1885. The guarantees must be exacted even in a case of danger of death.

marriage barred by difference of worship. This power of dispensing does not include a *sanatio in radice*.

5. Precisely the same power of dispensation is given by law to local Ordinaries for cases in which an impediment is discovered (i.e., by Ordinary, parish priest, assistant priest or confessor, though it may have been known to others already)<sup>1</sup> when all preparations for a marriage have been made, and delay until the dispensation could be obtained through the ordinary channels, viz., by letter from the Holy See, is not possible, or is very difficult without the probable danger of grave harm. In this case, the Ordinary cannot dispense from the canonical form of the celebration of marriage, so that the two witnesses must be present.<sup>2</sup>

It is probable, but not certain, that this dispensation might be given to parties who deliberately concealed an impediment till the last moment.<sup>3</sup> It is quite certain, however, that in these cases, if the marriage is a mixed marriage, or one with an unbaptized person, the usual guarantees must be given under pain of invalidity of the dispensation.

6. The same powers are given by law for convalidating a marriage already contracted, if there is probable danger of serious harm in delay nor time to apply to the Holy See.<sup>4</sup>

In both contingencies as set out above, the Ordinary can act even if the Holy See had been petitioned for a dispensation but had not sent the rescript.

#### 4, Powers of Parish Priests to dispense

I. In urgent danger of death when there is not time to apply to the local Ordinary, the parish priest and all who, by law, have the powers of a parish priest have precisely the same power of dispensing as the Ordinary, and under identical conditions. If there is time to apply to the local Ordinary, the parish priest cannot act validly.

<sup>1</sup> P.C.G.J., March 1, 1921 : ad IV on c. 1045, ».

<sup>1</sup> Weraz-Vidal, V, n. 413 ; Cappello, III, n. 233, but several authors think that the Ordinary can dispense from the form ; cf. Vromant, *op. cit.*, p. go. Certainly c. 81 gives more extensive powers than c. 1045.

\* Cappello, III, n. 234.

<sup>4</sup> The serious harm or inconvenience referred to may be that of Ordinary, assistant priest, party or parties to the marriage (P.C.C.J., May 3, 1945).



2. The power which Ordinaries have in urgent cases is given also to parish priests, assistant priest and confessor, but their power is restricted to occult cases<sup>1</sup> when the local Ordinary either cannot be applied to, or only at the risk of violating a secret. As stated in the case above, correspondence by letter is the normal channel of communication. No other need be used, and we believe the telephone and telegraph should not be used as these are public sendees. That they need not be used is certain.<sup>2</sup> The secret referred to above is, obviously, first of all the secret of the confessional ; it is also a secret committed to the priest as counsellor, or adviser, or confessor outside actual confession. There is no secrecy about what is a public impediment, though in point of fact it may be occult. The term occult cases is not restricted to occult impediments ; it certainly includes cases of conscience. The powers of the parish priest are enjoyed also by his delegate.

If this ecclesiastical impediment between the parties is public in point of fact, then, if recourse to the Holy See or the Ordinary is impossible, and the case is one of very grave necessity, it appears possible for the parish priest, without giving dispensation—forbidden by canon 83—to assist at the marriage on the ground of the supposed cessation of the impediment. But recourse to the competent Superior must afterwards be made in order that there may be no doubt about the validity of the marriage.<sup>3</sup>

3. The same powers are given to the parish priest for convalidating an invalid marriage, and under the same circumstances. The parties must renew consent.

#### 5. Powers of Confessors to dispense

I. The powers of a confessor in dispensing impediments in the cases mentioned are the same as those of a parish priest, but they may be exercised only in sacramental confession, even if it is null and absolution is not given. Every

<sup>1</sup> Even if occult cases are by nature public (P.C.C.J., Dec. 28 1927).

<sup>1</sup> P.C.C.J., Nov. 12, 1922.

<sup>3</sup> Cappello, III, n. 237, and authors there quoted. But if all persons present at the marriage think that a dispensation has been got, then the impediment becomes occult and the parish priest can dispense. This view is, we think, probable.



priest is a legitimate confessor in danger of death. As the confessor can dispense from the canonical form of celebration of marriage, in danger of death, he can dispense from the need of a competent assistant priest. The confessor, therefore, can deal only with impediments that are of their nature and in fact occult. This opinion is, we believe, more commonly held. Some authors, Arendt, Génicot-Salsmans, Vermeersch, think that the confessor can dispense from an impediment that is, of its nature, public but in fact occult. The one apparently valid argument against the view—of which these authors are, of course, aware—is that though dispensation is then given in the sacramental forum, it cannot be proved, and the Church would be obliged to treat the parties as unmarried. The conflict between the external and the internal fora would be acute. The dispensation is not to be entered in any register, since it is a matter of the seal, but another dispensation must be obtained for the external forum, since the impediment may become public in the external forum. Consequently, an impediment which is of its nature public but in fact occult, if manifested in confession, is not for the confessor as such to deal with, but he should ask permission to apply to the parish priest for dispensation in the external forum, unless the confessor himself is the assistant priest at the marriage (c. 1098), in which case the penitent must manifest the impediment out of confession, and thus the confessor as assistant priest can deal with the impediment and give dispensation.

2. When the case is not one of danger of death but one of a marriage for which everything has been got ready and which cannot be delayed, an impediment of its nature public cannot be dealt with by the confessor. Application must be made to the Ordinary or the parish priest.

#### 6. Powers of Assistant Priests to dispense

The powers of a priest who is neither the parish priest nor the confessor, and who, in default of the parish priest or Ordinary, or one delegated by either, is summoned to assist at a marriage (c. 1098, 2) are the same as those of

a parish priest assisting at a marriage in danger of death or in case of urgent necessity when marriage cannot be delayed.<sup>1</sup>

#### SECTION 2. Registration of Dispensations

1. The parish priest and the assistant priest who have given any of the dispensations mentioned above are bound by the canons (c. 1046) to notify the local Ordinary of the fact without delay, and a record of the dispensation is to be entered in the parochial matrimonial register. Since public impediments are in question, the dispensation granted is for the external forum. The confessor is not, of course, under this obligation.

2. Unless the rescript of the Sacred Penitentiary disposes otherwise, dispensation granted in the non-sacramental forum from an occult impediment is to be recorded in a register diligently kept in the secret archives of the diocese (c. 379), and no other dispensation is needed in the external forum even though the impediment that was occult becomes public. But another dispensation is needed, i.e., when the impediment becomes public, if the dispensation had been granted only in the internal sacramental forum.

What is here stated of the rescript of the Sacred Penitentiary applies to similar dispensations given by others. By such registration, all conflict between the external and internal fora is avoided, because the dispensation can be juridically proved, if necessary. It is obvious that no record can be made of dispensation given in the act of confession. The dispensation given in the non-sacramental forum is to remain secret so long as the impediment remains occult.

#### SECTION 3. Petition to the Holy See for Dispensation

If a petition for dispensation has been sent to the Holy See, local Ordinaries may not use such faculties for dispensing as they may have except in accordance with the canons (cc. 1048, 204). The principle here enunciated is that an inferior shall not intrude into matters referred to

<sup>1</sup> Cappello, III, d. 239.



a Superior except for a grave and urgent reason, and if he do so for such a reason, he must acquaint the Superior of the matter without delay.

#### SECTION 4. Dispensation from Multiple Impediments

In the case of marriages that have been or are about to be contracted, he who has a general induit to dispense from a given impediment can dispense from it even if it is multiple, unless other provision is expressly made in the induit. An example of multiple impediment would be multiple consanguinity arising from several common stocks, or muldple affinity, or the impediment of crime arising from a twofold source.

One who has a general induit of dispensing from several impediments of different kinds, either annulling or prohibitory, can dispense from them all simultaneously, when they occur in the one case, and even if they are public. In former discipline, this power was called the *indultum cumulandi*. This power is now given by common law.

#### SECTION 5. Dispensation when one of several Impediments is reserved to the Holy See

If, together with a public impediment or several of them from which one can dispense in virtue of an induit, another impediment co-exists from which one cannot dispense, recourse must be had to the Holy See for dispensation from all of them. But if the impediment or impediments from which such a one can dispense are discovered after dispensation from other impediments has been obtained from the Holy See, the faculty granted by the induit can be used.

#### SECTION 6. Causes that may be expressed in a Petition for obtaining Dispensation

i. Causes are canonical if usually accepted by the Roman Courts ; all others are uncanonical. Causes may be morally good or may reflect dishonour and defamation, as legitimization of offspring and suspicion of sexual relations,



Causes may be final and motive causes, or impelling causes only. The former are usually sufficient to induce the Superior to grant the required dispensation ; the latter are not, but contribute their force.

The commoner canonical causes for dispensation are the following :

(d) Place of domicile very 'circumscribed' (*angustia loci*) and very limited in population, i.e., fewer than three hundred Catholic families or 1,500 Catholics, and distant about one mile from any other place, a cause usually valid only for the woman, if marriage with one of equal social status in every respect is difficult. A place may be considered small though a woman of good family has had several offers of marriage. This cause would also be verified in times of war and plague.

(b) Advancing age of the woman (*ætas superadulta*), which is taken to mean twenty-four years completed, an age that appears low, except when one remembers that a first childbirth becomes increasingly difficult after that age, even in northern latitudes. This age does not apply to widows.

(c) Defect of means or competence to enable a woman to marry conformably with her state in life.

(d) Legal proceedings pending or likely to arise in respect of a woman's possessions or expectations.

(e) Poverty of a widow who has children to maintain (three or four).

(f) The benefit of peaceful relations and the extinction of quarrels or hatred between relatives.

(g) Excessive, suspected, or dangerous familiarities, and, much more, cohabitation between the parties intending marriage.

(A) Sexual intercourse of a person, or the danger of it with a relative, or other person who is prevented by an impediment from marrying the former, as also pregnancy, legitimation of offspring. This cause must be publicly known or likely to become public.

(i) Defamation of the woman, whether merited or not, owing to familiarity, real or supposed, with a relative.

(j') Revalidation of an invalid marriage.

(A) Danger of contracting a mixed marriage or of celebrating marriage in presence of a non-Catholic minister.

(I) Danger of incestuous concubinage.

(m) Danger of a civilly celebrated marriage.

(n) Removal of grave scandal.

(o) Cessation of publicly known concubinage.

(/0 Excellence of merits, such as, the defence of the Faith, or generous alms to the Church, or learning, or conspicuous virtue in the petitioners or in their parents. Add to this, the necessity of the continuance of a noble family or a family that is wealthy.

Other causes that may be urged are, orphanhood, illegitimacy, sickness, deformity, physical defects, loss of female honour by another than the desired husband, desire of a widower to marry for the sake of his children, need of help for maintenance, marriage arrangements already made, a well-known determination to contract a forbidden marriage, preservation of morality, fitness of the match, generosity to the public good, help of parents, mutual aid in advancing years, alms bountifully bestowed.

Dispensation may be granted without a cause being assigned in the rescript by the Superior. In petitions for dispensation, if the morally good causes are sufficient, dishonourable and defamatory causes should not be added.

## SECTION 7. The Petition itself

I. The contracting parties may petition for a dispensation personally or by proxy. If an Apostolic dispensation is required for the external forum, petition is regularly to be made through the Ordinary by the parish priest of the parties. If such dispensation is required for the internal forum, petition is made through a confessor to the Sacred Penitentiary, or by the confessor through the Ordinary without disclosing names, but not if the Ordinary might discover the true names of the parties. If an episcopal dispensation is required, petition is regularly made through the parish priest for the external forum, through the confessor for the internal forum, without revealing names. The



Ordinary' in question is the Ordinary' of domicile or quasi-domicile, or actual residence, and the Ordinary of the Catholic party, if that party is subject to the impediment, but the Ordinary of the bride if the impediment is relative.

2. The dispensation must be sought in the names of both parties if Catholic, and if the impediment is common to both, in the name of the Catholic party if the other is not Catholic, in the name of that party precluded from marriage by absolute impediment (vow), in the names of each party, by separate petition, if each is precluded from marriage by absolute impediment, except when the impediment naturally affects both together, as consanguinity.

Petitions to the Sacred Penitentiary may be made in any language ; in petitions to other Congregations, Latin is preferable, but Italian, French, Spanish, Portuguese, German, English may be used.

3. A petition may be refused by the Ordinary. It may then be sent to the Holy See without mention of the refusal. If the Holy See—through a Congregation—has refused the petition, dispensation cannot validly be obtained from the Ordinary without the consent of the said Congregation (c. 43). Petitions may be sent a second time, and several times, to the same Congregation, without mentioning former refusals.

A petition refused by a person's own Ordinary may not be sent to another Ordinary without mention of the refusal, but the prescription does not affect validity (c. 44). Dispensation refused by a vicar general and afterwards granted by the Bishop is invalid if mention is not made of the refusal; dispensation refused by the Bishop cannot be validly granted by the vicar general without the consent of the Bishop (c. 44).

4. Petitions to the Holy See for the external forum must contain the surnames and Christian names of the petitioners, the diocese of their domicile or quasi-domicile, or, if without fixed residence, of their actual residence, the precisely defined nature of the impediment, the degree of relationship, the circumstances as to a marriage already celebrated in good or in bad faith by either party or both, but not the



fact that the union has been already consummated, nor incestuous intercourse ; finally, the social condition of the parties, that a tax may be levied on the well-to-do, or no tax levied in the case of the poor.

#### SECTION 8. Errors In the Petition

Mistakes, if merely accidental, in the names or domiciles of the petitioner do not invalidate a dispensation, if the Ordinary can judge for certain of the personal identity of the petitioner (c. 47). Concealment of facts *{subreptio}* does not invalidate a rescript if all was expressed that, in accordance with the practice of the Courts, had to be expressed.

In major impediments (c. 1042), if only one motive cause is alleged, and it is false, the dispensation would be null, though the other secondary causes were true, but if the motive cause alleged is true, though other causes be false, the dispensation would be valid. Failure to disclose facts in a petition does not invalidate dispensation granted *motu proprio* (c. 45). Misstatements in a petition never invalidate dispensation granted for minor impediments (c. 1054).

In cases of mistakes concerning the impediments themselves, if the wrong kind of impediment is indicated, the dispensation is null ; also, if a remoter degree of relationship is expressed instead of the true degree (c. 1052) ; but dispensation is good if an additional impediment of the same kind and equal or more remote in degree was concealed. The original and the concealed impediments are dispensed.<sup>1</sup>

#### SECTION 9. The Granting of Dispensation

Dispensations granted *in forma gratiosa* are valid from the moment of concession ; those granted *in forma commissoria*, at the moment of execution. In the latter case, the causes alleged for the petition must exist at the moment of execution ; in the former, at the moment of concession (c. 41), i.e., when the grant of dispensation is actually inscribed.

A dispensation granted by the Holy See from an unconsummated marriage, or permission to contract a fresh marriage on the presumption that the former consort is dead, always includes dispensation from the impediment of

<sup>1</sup> P.C.C.J., July 8, 1948.



crime arising from adultery and promise of or attempted marriage (c. 1053).

#### SECTION 10. Offspring legitimated by Dispensation

1. Offspring born before the celebration of marriage is canonically illegitimate. By a dispensation from a diriment impediment granted by ordinary facilities or faculties delegated in virtue of a general indult—not, however, by virtue of rescript for particular cases—legitimation of the offspring is granted *ipso facto*, if already born or conceived, unless the offspring is adulterine or sacrilegious (c. 1051)? The aforesaid offspring is legitimated even should parent or parents die before the marriage is celebrated. If the parties do not, as a fact, celebrate the marriage, the offspring is legitimated if there was no fault on the side of the parties; this would be the case, for example, if the man became impotent. If there was deliberate fault, and the marriage was not celebrated, legitimation is doubtful.

2. Legitimation is not granted to adulterine offspring, i.e., when one or both of the adulterous parties were already married, nor is it granted to the offspring of a union when one of the parties was in Sacred Orders, or either or both had taken a public vow of chastity in religion, solemn or simple, perpetual or temporary.

<sup>1</sup> In 1924, the Sacred Congregation of the Sacraments granted a dispensation from consanguinity and crime, but explicitly refused to legitimate the adulterine offspring. Sacrilegious offspring is never legitimated; adulterine offspring is legitimated only by papal rescript; cf. *Gasparri de Matrim.*, 1231.

## CHAPTER XIV

### CONSENT IN MARRIAGE (cc. 1081-1093)

#### SECTION 1. The Qualities of Consent

In the contract of marriage, it is the mutual consent of the contracting parties that gives rise to the contract, and their consent cannot be supplied by any other human power (c. 1081). The Sacrament is effected by the consent, for it is the expressed consent that constitutes the proximate matter and form of the Sacrament. But no consent avails if the parties are absolutely precluded from marriage by any reason derived from Natural law, divine positive law or church law, though it is to be observed that the Church can rectify an invalid marriage by removing an ecclesiastical impediment, and by acknowledging the original consent, that was valid so far as Natural law was concerned.

Marriage is, therefore, a consensual contract, one, that is, which is completed by mere consent; it is not a real contract, that is, it does not require sexual intercourse to supplement the consent and to convert marriage into a Sacrament and an indissoluble contract. This theory, the *Copulatheoria*, had many capable defenders.<sup>1</sup> In our days, some writers have confused the issue by confounding the possibility of a contract and the exercise of a right arising out of a contract. In the case of impotence, it does not require proof of incapacity of intercourse to void the contract of marriage which was void *ab initio*.

2. The consent that gives rise to the matrimonial contract is that act of the will whereby each of the contracting parties hands over to the other and accepts from that other the right, perpetual and exclusive, over the body, in respect of actions that are essentially calculated, according to the ordinary course of nature, to generate offspring (c. 1081, 2). Since the primary essential purpose of marriage is the procreation and education of offspring, it is the right to sexual intercourse which is the object of the contract, so that “the

<sup>1</sup> de Smet, *op. cit.*, n. 96; Cappello, III, n. 577.

wife hath not control of her own body (in this matter), but the husband ; the husband likewise hath not control of his own body, but the wife ” (i Cor. 7, 4).

This right to intercourse is compatible with sterility, and even with mere absence of positive desire or intention to have offspring at all.<sup>1</sup> This right is not to be confused with the exercise of the right, for two parties can truly be married though they mutually agree never to exercise their rights, as when they take a vow, with mutual consent, of conjugal continency. The right given and taken is perpetual in that death alone will dissolve the contract, apart from the positive power of the Church to dissolve an unconsummated marriage, and it is exclusive as opposed to any participation in marital life with others. Since each party hands over to the other the right to all bodily functions in respect of conjugal intercourse it is obvious that a sin of injustice would be committed if a married person had intercourse with a third party, or if bodily sexual functions were exercised without any reference to marital intercourse.

3. Like the consent in every contract, matrimonial consent must be genuine (not fictitious), free, mutual, legitimately externally expressed by persons capable of contracting. Physical simultaneity of consent is not necessary in this contract nor in any other ; moral union of the double consent is sufficient, for as long as the consent of one party, expressed and not withdrawn, persists, the consent of the other party may be given even years after.

## SECTION 2. The Obstacles to true Consent

The obstacles to true Consent are : Want of the use of Reason, Defective Knowledge, Mistake, Pretence, Duress and Fear, Intention contrary to the essence of Marriage.

### 1. Want of the Use of Reason

Want of the use of reason is a natural impediment to every contract, so that infants, lunatics, the intoxicated, the drugged, the hypnotized, cannot contract marriage.

<sup>1</sup> In the text the words ‘ mere absence ’ do not mean positive intention to exclude the possibility of offspring by onanism.



## 2. Defective Knowledge

Ignorance of what marriage means is a radical impediment to it, for the object of the contract is not known. Wherefore, contracting parties must know the rights and duties of married life.<sup>1</sup> The kind of knowledge that is requisite is laid down in the canons (c. 1082, 1) : “ It is necessary that the contracting parties should not be ignorant at least of this fact that marriage is a permanent society between man and woman for the procreation of children.,, It is certainly sufficient that the parties know that they hand over to each other certain rights of bodily intercourse, though ignorant of the method of intercourse. Whether so much knowledge as that is necessary may be questioned, but they must certainly know of and accept mutual bodily relationships from which offspring issues, such as they realize to be peculiar to marriage. The strange and not unheard of conviction that offspring is the issue of conjugal kisses alone would be insufficient for the contract. On the other hand, true consent is possible where there is no very definite knowledge of what sexual intercourse is, where, after marriage, the wife recoils from it as from what she never intended, or thinks that intercourse is sinful. The canons (c. 1081, 2) assume sufficient knowledge after the age of puberty. Ignorance of the processes of generation and parturition do not exclude true consent.

The following representative authors are cited, to indicate the common teaching as to the amount of knowledge requisite before marriage :

Cappello, treating of the subject, thinks that the knowledge of what carnal intercourse means is essential for a valid contract, since it is not possible to enter into a contract in ignorance of the object of it. He admits, however, that the more common opinion is that the knowledge that marriage is a permanent society of man and woman for the procreation of offspring is sufficient, even though the manner of procreation is not known.

<sup>1</sup> Cappello, III, n. 581, records the case of a girl of nearly thirteen years of age marrying a man of twenty-five. The Sacred Congregation issued a decree of nullity as the girl was ignorant of the purpose of marriage.

## MARRIAGE

Aertnys-Damen requires less than this, and thinks that a vague idea that some corporal union between man and wife for the procreation of offspring is sufficient, but that a clear knowledge of what that union means is not necessary. A woman, therefore, who did not know the nature of the marital act, and who would not have married had she known, could have given a sufficient matrimonial consent.

Ayrinhac, commenting on canon 1082, says : “ The marriage consent is not possible without some, at least confused, knowledge of what constitutes the essential object of the marriage contract. This is the mutual right and obligation to the conjugal act : *Jus in corpora in ordine ad actus de se aptos ad generationem prolis*. Hence a person who would marry without having any idea of that right and obligation would not marry validly. Clear and explicit knowledge is not necessary. If one, knowing that the purpose of marriage is the procreation of children, would enter the contract with that in view, and would consent to all that it implies, although having no distinct idea of what is required for generation, there would be confused knowledge of, and consent to, what constitutes the essential object of the contract, and the marriage would be valid, even if the party was so disposed that he (she) would not give consent if he (she) knew what the act of generation really was. But at least that confused knowledge of the substantial object of the contract is necessary.”

Salmon, in a treatise on marriage, thinks that no precise knowledge is required : “ The contract of marriage is invalid when it is entered upon in ignorance of the fact that marriage consists in the mutual giving and acceptance of the rights to bodily functions in respect of generation. It is not required that the contracting parties should know precisely and in detail the manner of marital intercourse, but they should know that children are generated through the bodily union of man and wife, or at least that they are got by means of some mutual co-operation and intimacy of the parents, and are born of the mother. In default of this amount of knowledge, there is no knowledge of the



formal and essential object of the contract, and consequently there is no consent thereto?’

Vermeersch-Creusen, commenting on the canon, says : “It is possible, indeed, that one of the contracting parties may think that marriage is merely a society of two friends. In such a case, the consent would be insufficient since, through mistake, the object of the contract is not given. It is not essential that the parties should know the necessity of carnal intercourse. It appears to be sufficient that they should know that children are got by means of some mutual co-operation and intimacy of the parents, and are born of the mother.”

Génicot thinks vague knowledge suffices : “ It is to be observed that ignorance of or mistake concerning the duties of marriage, and especially the marital dues, are to be considered as accidental. For unless one or other of the parties expressly lays down some condition, that party is to be considered to have given consent to all and each of the obligations of the state of life which is to be entered upon, a state of life which, they observe, other people embrace. The Sacred Congregation of the Council has sometimes declared a marriage valid which a woman had contracted, though wholly ignorant of matrimonial duties ; sometimes the same Council has decreed that a dispensation should be asked for from a ratified (not consummated) marriage in precisely similar circumstances.” The author cited is referring mainly to the external forum.

Cardinal Gasparri, commenting on canon 1083, says : “ If a girl marries, knowing that marriage is a form of society with a man, who has children by his wife, and if she consents to enter into this kind of society, though she does not know that children are the result of carnal intercourse, and is even completely ignorant as to what carnal intercourse is, then her state of ignorance does not exclude matrimonial consent, nor does it invalidate her marriage.” This view was put forward before the Rota.<sup>1</sup>

A confessor will be very slow to decide against a marriage on account of such want of knowledge in his penitent.

<sup>1</sup> S.R.Rota, Decis. II, 117 § XVIII, 6 ; XVIII, 69.



## 3\* Mistake

Mistake concerning the actual person with whom marriage is celebrated renders the contract void from the beginning (c. 1083, 1). Such a mistake voids the contract by Natural law. Mistake concerning some quality or characteristic of the person with whom marriage is celebrated does not necessarily void the contract, even if the mistake was the reason for contracting (c. 1083, 2). *Postfactum*, therefore, a man could not repudiate his wife on the ground that he mistakenly thought she was a *virgo intacta*, or an heiress, or of gentle birth, etc. If, however, a legitimate condition was laid down *sine qua non*, that is, absolutely, there could be no contract if the condition is not verified.

Mistake may, however, void the contract in two cases according to the canons (c. 1083) :

1. If a mistake concerning some quality of the persons who contracted is equivalently a mistake concerning the person, as when Titius consents only because he believes Caia to be of gentle birth, or *virgo intacta*, and does not intend to marry her if she is not.

2. If a free baptized person contracts with one supposed to be free but who is in reality of servile condition, even if this is discovered after consummation, for it was no marriage *ab initio*. If freedom is acquired by marriage, the marriage is valid. But as this impediment does not affect the unbaptized, an unbaptized free-born person can probably marry a baptized slave with dispensation from the impediment of defect of Baptism.

A mere error concerning the unity and indissolubility or the sacramental character of the contract does not void the consent, even if the error was the motive reason for the contract. Consequently, the private error of non-Catholics, or the official heresy of their Church, in supposing marriage not to be a Sacrament does not prevent such people from consenting validly and receiving the Sacrament if they are baptized.

A valid marriage cannot be contracted where one or both of the parties think it valid whereas it is not. Yet such

people can give a true natural consent, so far, that is, as their own will is concerned, and this principle is verified in every *sanatio in radice* where consent is not renewed. More than that, if the parties know of an annulling impediment, they can still give a true consent, for the law, whether divine or ecclesiastical, does not affect the consent. This is probable.

Furthermore, matrimonial consent is not necessarily excluded by the knowledge or opinion of the nullity of the marriage. Thus, two parties could give matrimonial consent to be married though they knew they were related within the forbidden degrees. The marriage is, of course, invalid, but their consent need not be affected, and therefore such a marriage can be validated without any renewal of consent (*sanatio in radice*). Again, Caia can give a good consent to marry Titius though she thinks her husband is still alive. If, in point of fact, he is dead, the marriage is valid, if she consented to be married so far as she could be married.<sup>1</sup> This principle is stated in the canons (c. 1085).

#### 4. Pretence

If the intention is not to contract marriage at all, and a fictitious consent is given, it is obvious that the contract is void. But “interior consent is presumed to be conformed to the words or signs employed in celebrating marriage” (c. 1086, 1). Consequently, if a person wishes to rebut a marriage on the ground of fictitious consent, the simulation must be proved. It may be proved the more readily if the marriage is at once repudiated and if there are circumstances sufficiently cogent to prove that a fictitious consent was given. If, in a very exceptional case, such a marriage was civilly dissolved and the woman married another man, this second marriage could be valid, but in the external forum the Church would uphold the first marriage until the consent had been proved fictitious, and could oblige the woman to return to her first husband, but she could not render him the marriage dues. This conflict between the

<sup>1</sup> Verm., III, n. 774.



internal and the external fora was recorded by S. Thomas, who adds that the party would have to put up with excommunication, if imposed, rather than return and cohabit with the first consort ; or the party could flee to another country.<sup>1</sup>

It is obvious that a feigned consent, given without a justifying cause, is a grievous sin of deception and injustice, but it is not a sacrilege ; such a simulated consent might lawfully be given if a marriage was forced under stress of grave fear, or if a diriment impediment was known to exist, and, owing to the danger of serious scandal, the party could not withdraw from the ceremony ; but in neither case could there be any intention of consummating the union nor need the marriage be validated. The party who, by fictitious consent, has done grave injustice to the other party is bound to give a true consent if that is the only way of repairing the injustice, unless the offended party cedes his or her right. But consent would not be valid if a diriment impediment still subsisted.

#### 5. Duress and Fear

Marriage celebrated under physical duress—if that is possible—is null and void, just as any act done under extrinsic violence that cannot be resisted is to be considered as not done (c. 103, 1).

Marriage is void if celebrated through moral pressure or grave fear unjustly imposed by an extrinsic free cause, so that a person is forced to elect marriage to be quit of it. Fear may be grave absolutely or relatively to the sufferer. The injustice inflicted may be injustice to the person to be married or to relatives, and inflicted by any one, and the motive of the agent need not, probably, be directed towards forcing a marriage ; the case must be judged by the intention of the one suffering injustice.

No other kind of fear, even if it be a reason for entering upon the contract, voids a marriage celebrated through such fear (c. 1087, 2), and therefore fear justly induced, or

<sup>1</sup> *Suppl.*, q. 45, a. 4, at! 3.



fear from an interior cause, as sickness, or slight fear, do not void a marriage. It is to be observed that the fear that voids a marriage must be actually present at the time of celebration, and it is possible for it to be present subconsciously, when experienced beforehand, for fear that is induced to force a marriage is presumed to be present during the celebration.

Whatever be the source of the invalidity of a marriage celebrated from unjust grave fear, namely, whether it arise from Natural law or solely from positive law, is of no consequence except for the marriage of pagans among themselves. The point is disputed. If, however, a baptized person celebrate marriage with an unbaptized person, and grave unjust fear is experienced by either, the marriage is void.

#### 6. Intention contrary to the Essence of Marriage

If the marriage was celebrated with a positive act of the will of either or of both parties of excluding the contract, or all right to conjugal intercourse, or some essential property of marriage, viz., unity and perpetuity, it is null and void (c. 1086, 2). Personal error on the part of either or both as to the possibility of divorce does not affect the will to contract true marriage, nor does the error of thinking that Christian marriage is not a Sacrament ; but the positive exclusion of the Sacrament as a *conditio sine qua non* of marrying at all would invalidate the contract. It is to be observed that the internal act of the will is quite necessary to conclude the contract, so that merely an internal act of excluding any of the essential qualities of marriage would render the consent valueless and the contract null. Furthermore, an agreement mutually expressed by the parties to exclude an essential factor is by no means necessary. If the invalidating condition was mutually agreed upon (*in pactum deducta*), rebuttal of the marriage would be easy, but without this mutual and expressed agreement, there is a presumption of law that a true marriage was contracted. It is important to observe that a mere intention to seek divorce if the marriage prove to be inconvenient is sufficient to vitiate the matrimonial

consent, Such an intention need not be made a *conditio sine qua non* agreed upon by both parties. In its former decrees, the S. Rota appeared to follow the rules of jurisprudence, which required the intention (excluding a true marriage) to be formulated as a *conditio sine qua non*. But later it admitted that this was not necessary.<sup>1</sup>

If the marriage was contracted with the concomitant intention on the part of either or of both parties of not fulfilling the duties of marriage, it is valid. Two parties could validly marry' and yet intend to prevent conception or produce abortions or refuse marriage dues. They undertake the married state but are unwilling to fulfil its duties. Even the intention of never using marital rights would not affect the contract. The distinction here is that between the essence of marriage and the use of it ; but the positive intention of subsequent divorce, or of not allowing the other party to exercise the right of intercourse would naturally exclude the contract. As a woman who has been operated on for ovariectomy, fallocotomy or hysterectomy can validly marry, such operation undergone for avoiding conception would not exclude the contract.<sup>2</sup>

### SECTION 3. The Manner of expressing Consent

1. For the valid celebration of marriage the contracting parties, when they enter upon the contract, must both be present in person or by proxy (c. 1088, i).<sup>3</sup> There is no provision in English law for marriage by proxy.

2. For the lawful celebration of marriage (c. 1088, 2), the parties must express their consent orally ; it is not permitted to them, if they can speak, to employ equivalent signs. The pastor should make the contracting parties express their consent orally. Physical impossibility or great difficulty would permit of their using equivalent signs, as nodding the head, pressing the hand, or handing the ring.

<sup>1</sup> cf. Cappello, III, n. 599, where some difficulties arising from the practice of the S.R.Rota are solved.

<sup>2</sup> The intention to use an occlusive pessary so as always to prevent conception destroys matrimonial consent; S.R. Rota, Feb. 27, 1947.

<sup>3</sup> This affects also baptized non-Catholics; S.O., May 18, 1949.



3. Marriage can be contracted by means of an interpreter (c. 1090), or by proxy, but that the latter may be also lawful, certain conditions are laid down by the canons (cc. 1089-1091). For the valid exercise of the office of proxy, there is required a special mandate to celebrate marriage with a specific person, and this mandate must be signed by the one for whom the proxy acts and by the parish priest or the local Ordinary of the place where the mandate is given, or by a priest delegated by either, or by two witnesses.<sup>1</sup> If the principal cannot write, that fact must be specified in the mandate and an additional witness added who shall also sign the document, otherwise the mandate will be void. If, before the proxy has celebrated the marriage in the name of the principal, the latter has revoked the mandate—which can be done internally—or has lost the use of reason, the marriage, if celebrated, would be invalid even though neither the proxy nor the other contracting party were aware of the circumstances. Furthermore, the proxy cannot delegate his commission, but must fulfil it personally. All that is required in a proxy is that he or she should know what is required of them and what they are doing. A marriage celebrated by proxy, with all necessary conditions fulfilled, becomes a good marriage at once, irrespective of the actual condition of the principal at the time, short of loss of reason. But the parish priest should not assist at a marriage contracted by proxy or through an interpreter unless he has a just reason and cannot have the least misgiving concerning the genuineness of the mandate, or the good faith of the interpreter. He should always have the permission of the Ordinary if time permits.

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SECTION 4. Conditional Consent

1. Definition of Condition

A condition, strictly so called, added to consent as a *conditio sine qua non*, must be carefully distinguished from a mutual agreement annexed to the contract. Thus, if Titius marries Caia on condition that they may seek a

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<sup>1</sup> The principal must personally appoint the proxy; P.C.C.J., May 31, 1948.

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divorce when they please, the condition affects the contractual consent. If Titius marries Caia, and they mutually agree to spend part of each year travelling abroad separately, this agreement is modal, but does not affect the contractual consent. The expression of motive before the contract need not affect the consent, as if Titius marries Caia, declaring that he does so because she is the younger daughter of two. The expression of a condition would affect it if the condition was not verified. Consent may be given in marriage restricted by a mutual agreement that the pair are not to live together until a year after marriage. The obligation of living together arises only after the year. If the limitation was that the pair should cease to be man and wife after a fixed period, v.g., three years, this would be an invalidating limitation of the marriage contract and would render it void.

In determining, therefore, the validity of marriages to which consent has been given hedged in with conditions, modal circumstances, motives, suspensive conditions, we have to be clear as to these annexed circumstances, whether, namely, they were conditions strictly so called, or merely the expression of intentions added to a valid contract.

## 2. Principles concerning Conditions

The principles concerning conditions annexed to consent are as follows (c. 1092) :

1. No conditions should ever be added to consent unless they are lawful conditions and are added for a grave reason. A marriage in which a suspensive condition is expressed should not be celebrated without permission of the local Ordinary ; for such marriages are contrary to the practice of the Church. A suspensive condition is one that is added to the terms of a contract so that the contract will begin to be a good contract and binding as soon as the condition has been fulfilled.

2. If a lawful condition is added with mutual consent, it must be expressed in the act of contracting or before, and so that it can be proved to exist in the external forum.

3. If the condition refers to the future and is a necessary, impossible, or immoral condition, but not contrary to the essence of marriage, it must be considered as non-existent. This, however, is a presumption of law, and the law presumes that the condition did not exist or was not seriously meant, and that the marriage was therefore valid from the beginning. But as this is only a presumption of law, it can be rebutted, so that if the condition was seriously meant the marriage is invalid in conscience, but it will be upheld in the external forum until the condition has been proved to have been added. Therefore, when the condition was impossible, the marriage is void ; when the condition was immoral, the validity of the marriage is suspended until the condition has been fulfilled, but since an immoral condition may not be approved, neither party is bound to wait for its fulfilment.

4. If a condition, referring to the future, is contrary to the essence of marriage, the marriage is void, for no contract is possible if the contracting parties intend that which is opposed to the very object of the contract. Such a condition, one, namely, that is contrary to the essence of marriage, may exclude either the right to natural sexual intercourse, or the unity or the perpetuity of marriage. These three aspects of the matter will be here examined.

(a) Conditions opposed to natural sexual intercourse would include the avoidance of conception by the employment of contraceptives, and the refusal of marriage dues. To lay down any such condition would be to cut out from the contract the right to all proper natural sexual intercourse, that is, to invalidate the true marriage contract *ab initio*.

A matter of great moment nowadays is the question of the validity of a marriage, the parties to which lay it down as an absolute condition that they will have only two or three children but no more. It would be rash to say that such a marriage is necessarily invalid. Its validity depends on the nature of the intention of the parties. There can be no doubt that the marriage would be invalid if the parties intended to have two or three children and thereafter positively to repudiate the right of sexual intercourse, or



## MARRIAGE

the right to proper intercourse. If such were the case, the marriage would be void and, if not putative, the children illegitimate. But this need not be taken to be the prevalent intention in such marriages. Indeed, it must normally be supposed that the parties intend to marry, to have intercourse, and to refuse to fulfil the obligations of married life. Similarly, and this state of affairs is not uncommon nowadays, if the two contracting parties agree to have no children at all for two or three years until their prospects should have improved, or their financial condition should justify—as they say—an addition to the family (though meanwhile, they are not averse from buying a motor car), everything depends on the intention. If it was intended to refuse the right itself to sexual intercourse for a period, the marriage would be void. But this intention is not usually to be presumed. The parties intend to marry, but not to use, or more commonly to pervert, their sexual functions. A further difficulty arises in this context, for if the parties definitely intend not to hand over to one another the right to sexual intercourse until a period has elapsed, the validity of the marriage is suspended ; they could not meanwhile have any intercourse at all without committing fornication. Furthermore, the condition annexed to the consent of maintaining continency after the birth of two or three children or on given days or during given periods, need not, nor would it usually, mean refusing the right to intercourse, for if it means so much the marriage would be void. Such agreements will mean that the parties mutually agree not to use their rights.

The intention of both parties to a marriage of maintaining continency after marriage does not invalidate the marriage nor does a vow of continency taken with mutual consent. An agreement to remain continent, added as a modal circumstance, does not invalidate marriage, but such an agreement, if it have the character of a strict condition, probably invalidates a marriage, since thereby the right of mutual sexual intercourse is permanently excluded. The pastor will not, therefore, allow such a condition to be laid down but, *postfactum*, since there is considerable difference



of opinion on the point amongst divines, the marriage must be upheld.<sup>1</sup>

So little is known as to the intention of some of the Saints who are said to have entered the married state under a vow of virginity, that their cases cannot be usefully discussed. Hagiographers were rightly anxious to praise the chastity of such Saints in the married state rather than to question the validity of their marriages. The marriage between our Lady and S. Joseph was a true and valid one, and S. Thomas thought that before our Lady married she knew by divine inspiration that S. Joseph had the like intention with herself of preserving continency.

(/>) Conditions annexed to consent that are contrary to fidelity in marriage, such as the condition of being able to commit adultery, render a marriage void.

(r) Conditions contrary to the indissolubility of marriage are contrary to the good of the Sacrament, and therefore render the marriage void.

In a marriage which is celebrated with an annexed condition contrary to the essence of marriage, it is sufficient for the invalidity of the marriage if the condition was only mentally conceived by one or both parties without any external expression of it. The reason is obvious, for in such a case no true consent was given.<sup>2</sup>

5. A condition that concerns the future and one that is lawful suspends the validity of the marriage until the condition has been fulfilled, and that, even if only one party to the marriage elicits such conditional consent. But a grave sin is committed by one party intending such a condition unknown to the other. After mutual conditional consent, marital relations are not permissible, the pair are not man and wife till the condition has been fulfilled, they are bound to await and not to hinder the fulfilment of the condition, and if one marries a third party before the condition is fulfilled, such marriage is certainly valid though grievously sinful. It is obvious that a conditional consent, being a good consent, no additional consent is needed when the

<sup>1</sup> cf. Gasparri, II, n. 899 sqq.

<sup>2</sup> S.R. Rota, Dccis. XXXII, 275.

condition has been fulfilled. If marital intercourse is exercised before the condition is verified, that fact does not constitute a valid presumption that the condition has been revoked, though it did so formerly, and the marriage is now considered invalid in the external forum until the condition is verified.

6. A condition may regard the past or the present. Marriage is valid or invalid subject to the condition being verified or not, provided it was possible, morally good and seriously intended. If the condition was immoral, the marriage is valid if the condition not being contrary to the essence of marriage is verified ; if it is not verified, the marriage would be void.

### 3. Consent persisting

Though a marriage has been invalidly contracted in consequence of a diriment impediment, the consent given is presumed to persist until its revocation has been established (c. 1093). This is a presumption made by law. In regard to interior consent and the obligation in conscience, it will be evident to the party concerned whether or not consent has been revoked. The presumption is of the greatest moment in rectifying invalid marriages, as, for example, when the non-Catholic party to an invalid marriage will not have the marriage celebrated anew in presence of the parish priest and two witnesses ; his or her consent is presumed to persist, and a marriage can be healed (*sanatio in radice*) without any new consent. Furthermore, if, after marriage, a dispensation has been obtained at the request of the Catholic party, the consent of that party is presumed to persist, and after the dispensation has been granted such party cannot rebut the marriage on the ground of consent revoked. Revocation will have to be proved, and proof is usually very difficult.

## CHAPTER' XV

### THE CANONICAL FORM OF CELEBRATION OF MARRIAGE (cc. 1094-1103)

#### SECTION 1. Development of the Form

The Church requires the marriages of its members to be celebrated in a particular way that it may safeguard liberty and may know that a marriage has taken place validly.

1.Those marriages only are valid that are contracted in presence of the parish priest of the place of celebration, or of the local Ordinary, or of a priest delegated by either, and also of at least two witnesses, and in accordance with the rules expressed in the canons, without prejudice to certain exceptional cases allowed for in canons 1098, 1099. The sacred ministers receive the consent of the parties on behalf of the Church. The local Ordinary is a wide term already explained (c. 198, 1). The term parish priest includes the parish priest strictly so called, a quasi-parish priest, and the parochial vicars, as explained in the next section.

The witnesses may be any persons who have the use of reason, except that heretics are not to be admitted as witnesses unless with the approval of the Ordinary. Witnesses need merely see and advert to and be present at the marriage without wishing to be formal witnesses. They must, however, personally witness the marriage together with the priest.

2.The celebrated decree, *Tametsi*, of the Council of Trent (1563) introduced the formal mode of celebration of marriage. The priest was to be the parish priest of both parties or of either, or a priest delegated by him or by the local Ordinary ; and at least two witnesses were to be present. The decree had to be published in each several parish. It was not published anywhere in England, Scotland, or Wales. It could be abrogated by continued abeyance, and published by continued observance. It did not bind all indiscriminately even where it was published.



Exemptions from the Tridentine law were given to Holland by the *Declaratio Benedictina* (1741), and later extended to other countries. Exemption was also granted to the German Empire for mixed marriages and non-Catholic marriages by the Constitution *Provida* of Pope Pius X (1906). Very important and far-reaching modifications were introduced by the decree *Al. Temere* (1908), exceptions being granted to Germany and Hungary (1909). Under the Tridentine law an individual exempt from the law could validly marry one not so exempt, and evasion of law (*fraus legis*) operated against the validity of a marriage. The proper pastor could validly assist even if suspended from office, irregular, excommunicate, interdicted, against his will, or positively forced, and a putative pastor could do so. The application of this Tridentine discipline became so uncertain and gave rise to so much anxiety' that it was displaced by the decree *Al. Temere*, the provisions of which were embodied in the new *Codex Juris*, 1917, which applied to the whole Latin Church from May 19, 1918.

## SECTION 2. Valid Assistance at Marriages

I. The following, who take charge of a parish for a time, have the same power of assisting at marriages as a parish priest :

(a) The priest appointed by the local Ordinary' to administer a vacant parish (*vicarius aconomus*, c. 472, 1).

(ā) A priest acting, with the approval of the Ordinary, as substitute of a parish priest who is absent from his parish for more than a week (*vicarius substitutus*, c. 465, 4).

(r) The vicar (*vicarius*, c. 471) of a parish attached to a religious house and appointed to the cure of souls. If a vacancy occur, the Ordinary appoints another to carry on the parochial work (*vicarius æconomus*, c. 472).

(d) A priest supplying for a parish priest, and nominated by him, when the parish priest is suddenly called away from his parish. The latter must inform the Ordinary by letter as soon as possible. The substitute may act as parish priest even before the approval of the Ordinary<sup>7</sup>.

(é) An assistant priest (not every curate) appointed by the local Ordinary when the parish priest is incapacitated. Usually such a one would act as parish priest, but his powers will depend on the terms of his appointment.

(J) A Missionary of emigrants appointed by the local Ordinary to the care of souls, for his own subjects, due regard being paid to can. 1097, 2.<sup>1</sup>

(^) A curate may be given general delegation to assist at all marriages and to delegate in particular cases. But he does not enjoy the power in virtue of his office (c. 1096).

2. The parish priest or local Ordinary can assist at a marriage celebrated within their territory from the precise day and hour when they have taken canonical possession of their benefice or have entered upon their office (cc. 334, 3 ; 1444), but, in default of this condition, a putative parish priest could validly assist at a marriage, for the Church grants him the competency (c. 209).<sup>2</sup> But that this assistance of a true parish priest or local Ordinary may be valid, there is the further condition required that he should not be by judicial sentence excommunicated nor interdicted, nor suspended from office, nor declared to be such (c. 1095). Suspension, therefore, from a particular exercise of his office, as suspension from Mass, hearing confessions, or usual acts of jurisdiction, does not invalidate his assistance, but judicial suspension from office is necessary ; suspension from exercising any jurisdiction is not sufficient, for assistance at marriage is not an act of jurisdiction strictly so called. As already stated, a putative parish priest, that is, one thought to be a true parish priest by the faithful of a given parish, can assist validly at a marriage (c. 209). It is probably sufficient that the reason for this mistaken conviction on the part of the people should openly and publicly exist ; it is probably not necessary that the majority of the people nor that a large part of them should, in fact, think that the assisting priest is the true parish priest.

Furthermore, a parish priest can act validly in respect of assisting at marriages only within his own exact and precise territory and that, whether the parties married are his own

<sup>1</sup> S.C.C., Oct. 7, 1953; A.A.S., XLV, p. 758.

<sup>2</sup> cf. Verm.-Creus, II, n. 392 ; Cappello, III, n. 665.

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subjects or not ; in other words, his faculty is whofiy territorial (c. 1095, 1<sup>o</sup> 2). Where parishes are not clearly delimited, but are ruled in conjunction with others, the several parish priests within the territory can validly assist at marriages anywhere within the said territory. However, as an exceptional case, a military Chaplain has not territorial but personal faculties, and can therefore celebrate the marriages of his subjects anywhere.

The canons also safeguard the freedom of marriages by providing that the parish priest or the Ordinary who, in the name of the Church, asks and receives the consent of the marrying parties, shall do so neither under stress of violence nor grave fear. The violence or fear contemplated must have issued from a free external agency, and must have been imposed for the purpose of having the marriage celebrated by an otherwise unwilling priest. This provision of law does not extend to witnesses. Since, therefore, the assisting priest must ask and receive the consent, he cannot be a merely passive assistant, witnessing a marriage in the celebration of which he takes no part as qualified witness. This is true also now in cases of mixed marriages where no guarantees will be given<sup>1</sup> ; formerly the priest could be a passive spectator in such marriages.<sup>2</sup> The priest must ask each of the parties by word of mouth, writing, sign, either directly or through an interpreter, whether each wishes to

### SECTION 3. The Condition for granting Faculty to assist at Marriages

The granting of faculty to assist at marriages is not a grant of jurisdiction, nevertheless it is spoken of as such, since it is practically subject to the rules of jurisdiction (cc. 1094, 1096). A parish priest and a local Ordinary who can themselves validly assist at marriage can also give faculty to another priest to assist validly at a marriage, but within the limits of their respective territories (c. 1095, 2). The said parish priest or Ordinary must first be in actual possession

<sup>1</sup> S.O., Nov. 26, 191g, not published ; P.C.C.J., March 10, 1928, II.

\* S.O., June 21, 1912, for some places.



of the right before he can delegate it. The priest who is thus delegated for a particular marriage cannot ordinarily subdelegate the faculty ; if, however, he has been delegated generally for all marriages in a parish or diocese, he can then subdelegate for a particular marriage, as also if the power of subdelegation is expressly given (c. 199).<sup>1</sup>

#### SECTION 4. The Delegated Priest

Faculty to assist at a marriage granted in accordance with the foregoing rules must be expressly granted to a particular priest for a particular marriage under pain of invalidity, all general delegation being excluded, except in the case of assistant curates receiving general delegation for the parish to which they are attached (c. 1096, 1). The point that is here of most practical importance is that delegation must be expressly given to a particular priest ; any vague delegation would render a marriage celebrated with such delegation invalid,<sup>2</sup> except in the case of common error and that of positive and probable doubt. In such cases the Church supplies delegation according to the terms of can. 209.<sup>3</sup> But see note, p. 213. The designation of the assistant priest is sufficiently explicit when it is given to a priest holding a definite office, as that of parish priest; it may even be given to several priests. The marriage for which delegation is given is determined by expressing the names of the parties, or their office, or the time and place of celebration. The permission or delegation given must be truly given and not presumed; it must be expressly not tacitly given. It may not be given till the freedom of the parties is established.

#### SECTION 5. Lawful Assistance at Marriages

I. The parish priest or local Ordinary must be satisfied in the manner indicated by the canons as to the freedom of

<sup>1</sup> P.C.C.J., in c. 1096. A curate with general delegation can subdelegate a particular priest for a particular marriage, and the parish priest or Ordinary can give the curate permission to subdelegate in the same sense (A.A.S., Feb. i, 1928). A priest delegated for all priestly duties in a parish has not thereby delegation to assist at all marriages (P.G.C.J., Jan. 31, 1942 ; Jan. 25, 1943).

<sup>2</sup> Cappello, III, n. 671 ; Arregui, *Summ. Thiol. Mor.*, n. 793 ; cf. vol. III, p. 250. I

<sup>3</sup> P.C.C.J., Mar. 26, 1952; A.A.S., 1952, XLIV, p. 497.

the parties who intend to marry. He must also be sure that the parties are his proper subjects in respect of marriage, that is, that one or the other has a domicile or quasi-domicile in the territory, or has been residing in it for a month, or, if without any fixed abode, is actually residing there. When an abode is on the confines of two parishes, it is in that parish in which the main entrance is situated. A voluntary' domicile is acquired by actual residence during the necessary period or by an act of the will in taking up domicile. A necessary or legal domicile of a minor is the domicile of the parents or guardians, or in the case of a wife not legitimately separated from her husband the domicile of her husband. But both minors and wives can acquire a quasi-domicile whilst retaining domicile. A person about to marry' who leaves his or her domicile does not lose domicile before the marriage.

For a month's residence, it is the residence by night rather than by day that constitutes legal residence. An absence for one or two nights would not break continuity of residence. The month may be computed by the calendar, but the first day is not computed in the reckoning, so that a month from April 20th, would conclude at midnight on May 20th, but a month from January 30th would conclude at midnight on the last day of February, since this month has not a thirtieth day (c. 34). The month's residence must be completed, otherwise the parish priest of that territory could not lawfully assist at the marriage.

In respect of persons who have no fixed abode (*vagi*), their true parish priest or Ordinary is determined by the place of actual residence, and that, whether both or one only of the parties has no fixed abode. But residence must be real and extended over some not inconsiderable period of time, so that the person could be said to be living in the place. A week would suffice. For lawful assistance at such marriages, the permission of the local Ordinary or of his delegate is necessary as also in the case of a month's residence.

2. Since, therefore, a parish priest or local Ordinary may lawfully assist only at the marriages of their own subjects, in order to assist lawfully at the marriages of



persons of other parishes, the permission is required of the parish priest or local Ordinary of the domicile or quasi-domicile or month's residence of either party, except in the case of persons who have no fixed residence (*vagi*). Grave necessity, however, would excuse a parish priest from asking such permission, but he should be careful not to offend others. No permission of any proper parish priest or Ordinary is required in the case of persons with no fixed residence (*vagi*), but the parish priest must refer the matter to the Ordinary of the place or to a priest delegated by him, and obtain permission to marry such persons (c. 1032).

3. Marriage is to be celebrated by the parish priest of the bride, unless some just reason excuses (c. 1097, 2). The canon expresses an obligation. There may be several parish priests of a bride, in which case any of them may assist. The parties may have a reasonable preference for a particular church, not their own parish church, or for a parish priest other than their own. Marriages of mixed rites are celebrated in the rite and before the parish priest of the man, unless particular law rules otherwise, but though the woman may wish to adopt the Oriental rite of the man, the marriage is ruled by the canons of the Latin Church (P.C.C.J., April 29, 1940). Only the Holy See can now give permission for a change of rite (S.C. Orient, Nov. 23, 1940).<sup>1</sup>

4. In case a parish priest assists at a marriage without the requisite permission, he has an obligation in strict justice of sending the marriage fee received to the parish priest of the bride. If she have several parish priests, the fee is to be equally divided between those of her domicile and her quasi-domicile, probably not of her month's residence. If the proper parish priest gives permission for the celebration of the marriage of his subject in another parish, he has no strict right to the marriage fee given by the married parties to the officiating priest. But the parties may be reminded of their duty to support their parish priest. At the same time, there may be a local rule or approved custom of transmitting the marriage fee to the parish priest. Where the priest is the civil registrar, a double fee is rightly taken, though

<sup>1</sup> The local Ordinary can allow marriage to be celebrated in the man's rite.



the faithful sometimes do not understand why they have to pay twice. They should be told that the registrar's fee is exacted by Civil law, and the other fee is due to the assistant priest according to the approved custom of the place (c. 736).

#### SECTION 6. Marriage without an Assistant Priest.

I. If the parish priest or Ordinary or delegated priest cannot, without grave inconvenience, be present at a particular marriage, or if the parties cannot go to him, the law permits marriage to be contracted without the presence of a priest in two cases. But there must be moral certainty that the priest cannot be present without grave inconvenience. Obviously, therefore, some measures must be taken to arrive at this moral certainty, unless the matter is notorious.<sup>1</sup> The grave inconvenience may be interpreted in a reasonable sense. Neither the parish priest nor the parties themselves are obliged to resort to extraordinary means. The inconvenience must be personal to the parties who wish to marry, or to the priest.<sup>2</sup> The absence of the priest is not restricted to merely physical absence, but it includes the case where a priest is morally absent, v.g., if he could not celebrate the marriage without incurring fine or imprisonment.<sup>3</sup> Sometimes a priest is asked to set a marriage right without the presence of the civil registrar. He should not do so in this country, for he would be liable to imprisonment, unless the parties had already been civilly married to one another. Where, as in France, the civil ceremony must precede the religious celebration of marriage, and there is no question of the danger of death in either party to the marriage, it is held as very probable that the parties could use the benefit of the canons and marry in presence of witnesses only. The case would arise where the parties cannot be civilly married because, for example, they have not the necessary documents, and the priest is forbidden to celebrate the marriage under grave penalties. But the case should be rather an urgent one.

<sup>1</sup> P.G.C.J., Nov., 1925.

<sup>3</sup> P.C.C.J., May 3, 1945.

<sup>3</sup> P.C.C.J., July 25, 1931 ; *Penodwa*, Feb., 1932, p. 42 ; S.C. de Sacram April 24, 1935.

2. The cases referred to above, in which marriage can be celebrated without the presence of an assistant priest are the following :

(a) The first case is that of the danger of death. In danger of death, marriage contracted in presence of at least two witnesses is both valid and lawful. But if there is a priest who can be present, he should be summoned and should assist at the marriage together with the two witnesses, without prejudice, however, to the validity of the marriage in presence of the witnesses only. If any ecclesiastical impediment exists from which the Church is accustomed to dispense, and no priest is present to exercise the dispensing power which law gives him (c. 1044), the parties can marry validly, as the impediment ceases in such cases. The danger of death may be that arising from any cause, and a danger of death for either of the contracting parties. A moral estimate of the danger is sufficient. In the canons no mention is made of any particular motive, such as easing the conscience ; no special motive, therefore, is necessary.

The witnesses to a marriage in case of the danger of death where no priest is present should be careful to see that the marriage is rightly entered into, with due and full consent, and should afterwards acquaint the parish priest of the fact. In extreme cases, where no witnesses nor priest can be got and where it is a case of danger of death, the parties may marry themselves, for the presence of witnesses is a prescription of ecclesiastical law only. The same may be said for cases outside the danger of death that are extremely grave and urgent.<sup>1</sup>

(£) The second case is that in which the legitimate priest cannot be got nor visited without grave inconvenience and this state of things is prudently foreseen to be likely to continue for a month. In such a case the parties may marry in presence of two witnesses only. As stated above, the grave inconvenience must be personal to the priest or the parties ; it may even be induced by the parties, as when they undertake a long sea-voyage or go to some place where a priest cannot be had ; the inconvenience must be likely to

<sup>1</sup> cf. Cappello, III, n. 695.



continue for a month uninterruptedly. Though a priest need not be present in the two cases cited so far as the validity of the marriage is concerned, one must be got, if reasonably possible, for the lawful celebration of marriage, unless some just reason excuses. Probably an excommunicated, interdicted, or suspended priest after condemnatory or declaratory sentence need not be got. The priest, if present, need act merely as a witness, without asking and receiving the matrimonial consent of the parties, and he can dispense from certain impediments (c. 1044), and even from the canonical form of celebration.

#### SECTION 7. Persons subject to the Canonical Form

1. The canonical form of the celebration of marriage, as explained, must be observed, firstly, by all persons baptized in the Catholic Church whenever they marry among themselves, even though they have lapsed from the Faith<sup>1</sup>; secondly, by all persons converted to Catholicism from heresy or schism whenever they marry Catholics, even though they subsequently lapsed after conversion; thirdly, by the aforesaid when they marry non-Catholics, baptized or unbaptized, even with dispensation from the respective impediments of mixed religion or difference of worship; lastly, by Catholics of an Oriental rite when they marry Latin Catholics who are subject to the law of the canonical form of celebration.<sup>2</sup>

2. Those who are not Catholics, i.e., those who have never been aggregated to the Catholic Faith, when they marry among themselves, are nowhere bound to fulfil this prescription of law.

3. Those born of non-Catholics, and the offspring of a mixed marriage,<sup>3</sup> though they were baptized in the Catholic Church, who have grown up from infancy, i.e., before their seventh year completed, in heresy or schism or infidelity or without any religion, were exempt from this prescription of

<sup>1</sup> cf. *supra*, vol. IV, p. 132 sqq.

<sup>2</sup> *Pars ligata communicat cum altera suum ligamen.*

<sup>3</sup> P.C.C.J., July 20, 1929; the term non-Catholic includes apostates (P.C.C.J., Feb. 17, 1930) and atheists (P.C.C.J., July 30, 1934b)



law when they married non-Catholics, but they cease to be exempt as from Jan. I, 1949 (*Motu proprio*, Pii Pp. XII, Aug. I, 1948).

Though no one is made a heretic by baptism, the term heretical baptism is commonly used to express intentional aggregation by baptism to an heretical sect. In infancy, the child is not, of course, aggregated to any sect except by the intention of others, an intention which is of no avail, for the child aggregates itself when it comes to the years of discretion. However, for the purposes of the canons, a child of heretical parents baptized in a non-Catholic church is not baptized in the Catholic Church.

In regard to those who have been doubtfully baptized, their marriages are upheld as valid though not contracted in canonical form, until the validity is rebutted by evidence (c. 1014).

The children of converts, if brought up from infancy in the Catholic Faith, are considered to be converts in this context.

#### SECTION 8. The Rite and Blessing

The canons (c. 1100) prescribe that, apart from cases of necessity, marriage is to be celebrated in accordance with the rites prescribed in the ritual books approved by the Church or sanctioned by laudable custom. The parish priest should see to it that the married receive the solemn blessing. This can be given to them even after years of married life, but only during the Nuptial Mass with due observance of the Rubrics, and not during the closed times except with the sanction of the local Ordinary. The solemn blessing can be given only by the priest himself who can validly and lawfully assist at the marriage or by one delegated by him to do so. The most solemn blessing is embodied in the Nuptial Mass. A less solemn one may be given by a priest who has an Apostolic indult to that effect, but with the permission of the local Ordinary when Nuptial Mass is not said. There appears to be a legitimate custom in England to give this blessing. The Mass need not be offered for the newly-wed unless a stipend was given.

## SECTION 9. Celebration of a Mixed Marriage

1. A mixed marriage is ruled by the same prescriptions of law in regard to form as a Catholic marriage, not excluding the part which the priest takes in asking and receiving the matrimonial consent of the parties. The parish priest, therefore, may not now, as formerly he could in certain places, remain an entirely passive spectator of a mixed marriage when the guarantees had not been given. The usual questions made by the assisting priest during the marriage celebration as to matrimonial consent have now to be made in all cases, unless the Holy See prescribes otherwise.<sup>1</sup>

2. All sacred rites are to be omitted in the case of mixed marriages, that is, the surplice and stole are not to be worn ; a nuptial sermon is not to be given (though a brief exhortation is not forbidden, and indeed it would be very appropriate, especially if non-Catholics were present in the church) ; the ring is not to be blessed ; the nuptial blessing is not to be given ; Mass, of course, may not be celebrated, that is, neither the Nuptial Mass nor any other Mass that has the appearance of being connected with the marriage celebration. The marriage itself is to be celebrated outside the church, a term which does not include either the sacristy or a private oratory. These absolute restrictions were mitigated somewhat by Pope Pius IX (1858) to this extent that His Holiness left it to the prudent judgment of the bishop, for the sake of precluding graver evils, such as hostility to the Church, danger of civil or non-Catholic marriage, risk of perversion, to permit the marriage to be celebrated in the church and to be blessed, provided the usual guarantees are given and always excluding the Nuptial Mass or any other Mass complementary to the celebration of the marriage.<sup>2</sup> Some bishops, therefore, permit a mixed marriage to be celebrated in the church as though it were a marriage between Catholics ; some forbid the blessing to

<sup>1</sup> Wenz-Vidal, V, n. 560, note (40), for the development of this discipline (cf. also P.C.C.J., July 25, 1931, cited above).

\* P.C.C.J., Nov. to, 1925, IX.



be given. The particular custom of the diocese must be always observed.

Pastoral Note

The Church does not only discourage but altogether condemns mixed marriages, and grants dispensations with reservations and insistence on the safeguarding of the Faith. As there were abundant reasons before for opposition to such marriages, there are additional reasons today. The ‘comprehensive’ character of all religion outside the Catholic Church in England, the complete repudiation of all authority in matters of faith and morals, have assuredly led to the abandonment of moral principles except in so far as they are expedient, economically profitable, and not too exacting. It is within the experience of Catholic pastors that in many mixed marriages the moral sense of the Catholic party, especially of the wife, is gradually broken down, and the common practices of the abuse of marriage are quickly adopted. Thereafter, the Catholic wife has to choose between her religion and her husband, with what result one can easily imagine. Hence arise the usual pleas that economic hardship excuses the abuse of marriage, that the Church through its pastors is too exacting, that Christ our Lord forgave the adulterous woman, that confessors do not know the difficulties of the married state, and so on. The Protestant husband may not, indeed, be expected to know moral principles any better than many of his teachers. What so many good and upright non-Catholics do, cannot, he thinks, be morally bad. The Catholic wife comes to think similarly, and the next step is the abandonment of her religion.

SECTION 10. The Registration of Marriage

I. After marriage has been celebrated, the parish priest or he who has acted on his behalf, must inscribe without delay (within three or four days) in the register of marriages the names of the parties married and of the witnesses, the place and date of celebration, and all else in accordance with the manner prescribed in the ritual books and ordered

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by the local Ordinary'. This he must do even though another priest, delegated by himself or by the Ordinary, has assisted at the marriage. It is not necessary', nor is it customary in England, for the parish priest to enter all the marriages in the register. The entry' is made by the priest who celebrates the marriage. The fact of marriage convalidated or dissolved is also to be inscribed in the register. When the fact of a marriage cannot, owing to possible scandal or by reason of secrecy, be entered in the common register, it must be entered in the secret archives of the episcopal Curia (c. 379), but no entry is to be made if there is any possibility of violating the sacramental seal. In cases of sacramental secret, the express permission of the party' concerned must be given.

2. The parish priest must also enter the record of marriages in the baptismal register, usually in the margin, under the date of the respective baptisms, of those whose marriage has been celebrated. If the parties were baptized elsewhere, he must send word of the marriage personally or through the episcopal Curia, to the parish priest or priests of the place of their baptisms, that the marriage may there be entered in the baptismal register. The obligation of making these entries and of sending notification of marriage is grave ; those who neglect this duty may be punished.

Marriages celebrated under extraordinary circumstances must also be entered without delay in the marriage register, notification being sent by the priest, if any, who assisted at such marriages, otherwise by the witnesses or the contracting parties, and these are severally bound to do so. The parish priest of the place in which the marriage took place is the natural person to whom word is to be sent. A marriage of conscience, as it is called, being a matter of the strictest secrecy, is to be entered in a special register kept in the secret archives of the episcopal Curia.

## CHAPTER XVI

### MARRIAGE OF CONSCIENCE (cc. 1104-1107)

Though marriages are, in general, to be celebrated publicly for obvious reasons, cases arise in which a union that has hitherto been occult concubinage must be converted into true marriage for the peace of conscience of the parties. It is then to be treated as a secret of the highest moment, and is called a marriage of conscience. Only a very grave and urgent reason will justify such a marriage ; the local Ordinary and all who, in law, are so styled, are to judge of the adequacy of the reasons, but not the vicar general without special mandate.

When such a marriage of conscience takes place, the assistant priest, the witnesses, the Ordinary and his successors are under the grave obligation of secrecy, as also is each party to the marriage unless the other party consents to its publication. But the obligation to secrecy on the part of the Ordinary does not extend to cases where scandal or grievous offence to the sanctity of marriage would at once arise from keeping the secret, or to cases where the married parties do not see to the baptism of their offspring, or have them baptized under assumed names, without informing the Ordinary within thirty days of the birth of offspring, of their baptism, and of the truthful exact names and description of the parents. The obligation of secrecy also lapses if the parents neglect the Christian upbringing of their offspring.

## CHAPTER XVII

### THE TIME /XND PLACE OF CELEBRATION OF MARRIAGE (cc. 1108, 1109)

Marriage can be celebrated at any time of the year, but the civil law should be strictly observed as to time and place. The local Ordinary can forbid marriages to be celebrated in the church outside certain hours of the day, for the sake of good order and to avoid scandal (c. 1171).

The solemn blessing of marriage, that is, the Nuptial Mass with its accompanying nuptial blessing, is forbidden from the first Sunday of Advent to Christmas Day inclusive, and from Ash Wednesday to Easter Sunday inclusive. But local Ordinaries may permit the solemn blessing even during those periods for a good reason without prejudice to liturgical laws, and having warned the married parties to refrain from unusual display.

Liturgical law forbids the Nuptial Mass on Sundays, holy days of obligation, including those suppressed, doubles of the first or of the second class, certain privileged octaves, namely, Easter, Pentecost, Epiphany, Corpus Christi, also on Ash Wednesday, the first three days of Holy Week, certain vigils, namely, Christmas, Epiphany, Pentecost, All Souls' Day, Rogation Days if there is procession and only one Mass. On days when a votive Mass is not allowed, the Mass of the day may be said with the prayer *pro sponsis* under one conclusion with the first prayer, and the nuptial blessing may be given. But All Souls' Day is excepted, and neither the prayer for nor the blessing of the married parties is allowed on that day.

Catholic marriages are to be celebrated in the parochial church, but the local Ordinary and the parish priest can give permission for celebration in another church not parochial, or in an oratory, public or semi-public.

Marriages may not be celebrated in a private house except with permission of the local Ordinary in extraordinary



cases and for a good reasonable cause ; only in a case of urgent necessity with the permission of the local Ordinary and with suitable precautions taken may a marriage be celebrated in the church or oratory of a seminary or of women living in religion.

Note. Assistance at Marriage (cf. p. 201)

In consequence of a decision of the Rota in 1927 (R.D., p. 456) the opinion that common error supplied delegation for marriage when such delegation was lacking, in virtue of canon 209 was considered to be probable. This decision of the Code Commission puts that beyond doubt. There are, however, conflicting opinions as to what constitutes common error. In view of the necessity of being able to establish the validity of marriage in the external forum, and of placing the validity of the sacrament beyond doubt no opinion should be relied on which has any real authority against it.

## CHAPTER XVIII

### THE EFFECTS OF CHRISTIAN MARRIAGE

#### SECTION 1. The Effects of Marriage as a Sacrament

As a Sacrament of the Living, marriage contracted in a state of grace increases sanctifying grace and imparts a right to the actual graces that are necessary in the married state. The latter graces are necessary for the fostering of mutual love, the keeping of mutual faith, the education of offspring, and the bearing of the daily trials of married life.

Since this Sacrament must be received in the state of grace, to receive it in mortal sin is sacrilegious; to administer it in mortal sin is probably a venial sin, since lay people are not the consecrated ministers of the Sacrament.

#### SECTION 2. The Effects of Marriage as a Contract

1. There arises from this contract the bond of marriage, which, of its nature, is permanent and exclusive.

2. From the inception of the contract, each party has equal rights and equal duties in respect of the acts that are proper to the married state. The husband is as much bound as the wife to render the marriage dues. The right to preserve continence for the first two months of married life is not now upheld by the canons. The exclusive right which each party has over the bodily sexual functions of the other party can only be extinguished by the death of one party, unless dissolution of the bond is granted in a marriage that is not consummated or legitimate separation takes place. The right to exact marital privileges may, however, be suspended or extinguished. Thus, an adulterous husband cannot claim, as of right, sexual intercourse with an innocent wife.

3. Marriage induces the obligation of life in common, both of board and bed, so that a wife may not, without a valid reason, live apart from her husband, nor the husband from his wife. A wife who will not live with her husband,

or *vice-versa*, when there is no solid valid excuse for living apart, is guilty of grave injustice.

4. The rights which each party has in respect of sexual intercourse and of common life are equal in all respects. A husband cannot claim more than a wife. Married people are sometimes deluded into thinking that the husband has the prior claim, the wife only a secondary claim, and that the husband may please himself as to the frequency of intercourse, or that the wife may please herself as to the times of conception or the number of children. False sentiment is commonly based on the alleged plea that child-bearing, being so much more a matter for the wife, is to be left to her discretion, whereas, in point of fact, the matter of the contract is marital intercourse whenever reasonably desired by either party, provided that no grievous harm ensues or is very likely to ensue. In respect of true marital dues, the husband and wife are equal, but in all other domestic relations, the husband is the superior of the wife, and has the right to command her.

5. Prescinding from the rights which, by civil law, a wife now has in England over her separate estate, and the right a husband has not to bestow on his wife or children the titles of his nobility, which is also a provision of civil law, the wife shares the condition of her husband so far as canonical effects are concerned. Thus, she takes his name, shares his privileges, may adopt his rite, acquires his domicile, may be buried in his tomb. Church law, however, can discriminate by particular provision in the canonical effects that regard husband and wife.

6. Parents are most seriously bound to see to the religious, moral, intellectual, physical, and social education of their children and to make provision for their temporal benefit. Since, therefore, parents, and the father primarily, have the right and duty of educating their offspring, they are endowed by nature with authority which no State can take away from them. But the offspring becomes emancipated by degrees, and in some respects, as in choosing a fit state of life, children may choose for themselves, so that parents cannot enforce a particular state of life upon them,



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## MARRIAGE

least of all the married or the religious state (cc. 2352, 971), nor can they lawfully deter their children from a life of continency, the priesthood, or religion (c. 538). The obligations of parents in respect of the education of their children have been explained in the treatment of the subject in the chapter on the Fourth Commandment.<sup>1</sup>

<sup>1</sup> *Subra*, vol. II, p. 72 sqq.

## APPENDIX 1

### Legitimacy (cc. 1114, 1115)

Those children are legitimate who are conceived or born in valid or putative wedlock, unless, owing to solemn religious profession or the reception of Sacred Orders by a parent, the sexual use of a marriage already contracted was forbidden at the time of conception. The extreme limits for the birth of a child after intercourse and therefore for presumed legitimacy are one hundred and eighty days at the least and three hundred days as a maximum, but expert opinion would be accepted in opposition to these limits to disprove legitimacy, for the limits assigned are merely a presumption of law which may be rebutted by evidence to the contrary. A child, exposed and deserted, cannot be said to be certainly illegitimate, but the presumption is that it is so, though Pope Benedict XIV urges that the judge should incline to the favourable view.<sup>1</sup> For promotion to the clerical state a dispensation should be sought.

## APPENDIX 2

### Legitimation (cc. 1116, 1117)

I. Offspring is legitimated by the subsequent marriage of the parents, whether the marriage is a true one or only putative, whether newly contracted or convalidated, and even if it is not consummated, provided that the parents were capable in law of contracting marriage at the time of conception, or any time during the pregnancy, or at the time of the birth of the offspring.

This provision of law is a legal fiction, and is retrospective, and of course affects only natural children, that is, it does not favour spurious children<sup>2</sup> who were born at a time when

<sup>1</sup> *Epist. Redditae*, Dec., 1744.

<sup>2</sup> Spurious offspring are either adulterine, or sacrilegious, or incestuous, or nefarious (offspring of parents in the direct line of consanguinity).

their parents were incapable of valid marriage. Consequently, an adulterine or incestuous child could be legitimated if the impediment had ceased to exist by lapse of time and the parties married before the birth. The favour of law is granted to the offspring, and is independent of the knowledge or wishes of the parents. Offspring born of parents between whom there existed at the time of the birth the impediment either of age or disparity of worship is not legitimated by the subsequent marriage of the parents at a time when the impediment had ceased to exist.<sup>1</sup>

Legitimation can be granted also by papal rescript even to spurious offspring. The right of legitimating offspring is exercised for the external forum through the Sacred Congregation of the Sacraments, and for the internal forum through the Sacred Penitentiary especially in convalidating invalid marriages. Explicit legitimation must be granted if the rescript is a particular one ; if dispensation is granted and convalidation produced by the exercise of ordinary or delegated faculties by virtue of a general induit, legitimation is implicitly granted, but not in favour of adulterine or sacrilegious offspring (c. 1051).

Legitimation is sometimes given for some canonical effects but not for others, as for reception of Sacred Orders but not for dignities. This acts by way rather of dispensation than of complete and true legitimation.<sup>2</sup>

2. Children legitimated by the subsequent marriage of their parents enjoy the same canonical status as legitimate children, unless some contrary provision is expressly made. Thus, they could not hold certain dignities in the Church. They are debarred from becoming Cardinals, bishops and abbots or prelates *nullius* (cc. 232, 331).

It is important to observe the difference between a simple convalidation of marriage and a convalidation by a *sanatio in radice*. By the former, the children born are legitimated from the moment true consent is given, the impediment being dispensed, but by a *sanatio in radice*, as the consent is

<sup>1</sup> P.C.C.J.j Dec. 6, 1930.

<sup>3</sup> cf. Wemz-Vidal, V, n. 671, note (44), for a long dissertation on the subject of papal legitimation and civil effects.



not renewed, the children born before the *sanatio* ζτε held legitimate not legitimated, and there was no period at which they were illegitimate. They are held legitimate from actual birth.

3. The matter of legitimation may thus be summarized :

(λ) By subsequent marriage of parents, natural children are implicitly legitimated if the parents could have contracted marriage validly at the time of conception, during pregnancy, or at the time of birth (c. 1116).

(ò) A *sanatio in radice* contains a dispensation from any ecclesiastical impediment existing and implicit legitimation of even spurious children whose illegitimacy is due to such impediment (cc. 1138, 1139).

(r) When a dispensation from a diriment impediment is granted by ordinary power or by power delegated through a general induit (but not delegated through a rescript in particular cases), legitimation of offspring is included except for offspring of adulterous or sacrilegious unions (c. 1051). Therefore, legitimation is included in dispensations granted by the Holy See and by local Ordinaries in virtue of ordinary power (as *in dubio facti*, c. 15), or in case of urgency (c. 81), or in danger of death (c. 1043), or in the *casus perplexus* (c. 1045), and also in dispensations granted by a parish priest in accordance with the canons 1043, 1045.<sup>1</sup>

### APPENDIX 3

#### Legitimation in English Law

The Legitimacy Act, 1926, provides for the legitimation of children by the subsequent marriage of their parents. Children born out of wedlock suffered from legal disabilities up to 1926, and this Act has removed many of them. Where the parents of illegitimate children marry or have married before or after the commencement of the Act, January 1, 1927, the marriage legitimates the children from that date or from the date of the marriage, whichever last happens, providing that the father was or is domiciled in England

<sup>1</sup> *I.L.E.R.*, Nov., 1931, p. 522. Even if the parents did not marry, a dispensation from a diriment impediment legitimates their child if born after the dispensation was granted. But see note i, p. 34.

or Wales at the date of the marriage. The parents must have been in a position to marry, and if either of them was married to a third person when the child was born the Act does not apply. The petition must be presented to the County Court.

A legitimated person under the Act shall be entitled to take any interest (a) in the estate of an intestate, (b) under any disposition, (c) by descent under an entailed interest arising after the date of legitimation as if the legitimated person had been born legitimate. Where a right to property depends on the relative seniority of the children, the legitimated person ranks as if he had been born on the date of legitimation.

Where an illegitimate person dies after January 1, 1927, and before the marriage of his parents, leaving any spouse, children or remoter issue living at the date of such marriage, the Act applies with regard to interests in property as if he had been legitimized on the date of his parents' marriage.

Provision is made to apply the Act to persons legitimated by extraneous law, as, for example, a marriage in Scotland, the British Dominions, or in a foreign country.

Where, after January 1, 1927, the mother of an illegitimate child, such child not being a legitimated person under the Act, dies intestate and without leaving legitimate issue, the illegitimate child shall be entitled to the same interest in her estate as he would have been entitled to if born legitimate.

## CHAPTER XIX

### SEPARATION OF THE MARRIED (cc. 1118-1132)

#### SECTION 1. Dissolution of the Bond of Christian Marriage

A Christian marriage that has been ratified and consummated cannot be dissolved by any human power nor for any reason, except by the death of one of the parties. Theologians appeal to the sacramental character of Christian marriage and to its consummation, both together, as a reason for the indissolubility of such marriages, in that Holy Scripture teaches that by those two elements is expressed in the most perfect way the union of Christ with the Church.<sup>1</sup> On the other hand, a decree of nullity is an authentic declaration that a marriage was null and void from its inception owing to the existence of a diriment impediment to the contract.

2. But an unconsummated marriage between two baptized persons, or between a person baptized and one not baptized, can be dissolved in two cases, namely, by solemn profession in religious life, and by dispensation granted by the Holy See. Both parties may petition for the dissolution, or only one party, even contrary to the wish of the other party.

When marriage has been consummated, it is said to be indissoluble both intrinsically (i.e., by the mutual consent of the parties), and extrinsically (i.e., by authority extrinsic to the parties). Adultery is not a ground for dissolution of the bond. Though God could dissolve such a marriage, He has nowhere, in the New Testament, expressed such a permission ; on the contrary, since consummated Christian marriage more perfectly signifies the union of Christ with the Church, He has endowed it with a more perfect fixity.

3. By solemn religious profession, non-consummated Christian marriage is dissolved. This is defined by the

<sup>1</sup> Ephes. 5, 31, 32.



Church.<sup>1</sup> The profession is the taking of solemn perpetual vows in a Religious Order strictly so called, and the dissolution of the bond issues from Ecclesiastical law. If marriage was contracted before Baptism and consummated, but after the conversion of both parties to the Faith was not again consummated, it is not certain that such marriage is dissolved by religious profession.<sup>2</sup>

4. Non-consummated Christian marriage can be dissolved by papal dispensation, a power reserved to the Pope, who executes the dispensation through local Ordinaries (c. 1963). There are cases of this power to dispense having been delegated. This papal power of dispensation has been constantly exercised by the Holy See from the time of Pope Martin V (1417), but it by no means follows that the indissolubility of such marriages has its origin in Ecclesiastical law. This act of dissolving marriages is not an act by which a divine law is relaxed in a particular case, but it is an act of vicarious power, whereby the bond that issued from a human act is directly dissolved. Inasmuch as the human will is subjected to the power of the Pope, the bond that was induced by the human will is relaxed, and consequently, the divine law in the matter of the bond no longer operates.<sup>3</sup> But a sufficient reason for dissolution is necessary for the validity of the dissolution, for the bond of such marriages is not derived from Ecclesiastical law, but is immediately derived from Natural and divine law, in which the Pope cannot dispense without a sufficient reason, nor does he dispense in the rights acquired by one of the parties to the marriage, for the Pope himself is subject to divine law. But it is his prerogative to judge of the sufficiency of the reasons alleged ; if, afterwards, the reasons are found to be false, he or his successors can or would declare invalid a dissolution that was fraudulently obtained.<sup>4</sup>

<sup>1</sup> Cone. Trid., s. 24, c. 6.

<sup>1</sup> Cappello, III, n. 760.

\* cf. Cappello, III, n. 223. But Slater (I, p. 112) explains the matter by saying that the Pope can for a good cause dispense in the name of God, or at least declare that in certain circumstances the bond has ceased to exist.

\* cf. Cappello, III, nn. 762, 223 ; Wemz-Vidal, V, 624, note (38), quoting a curious dispensation granted by Pope Alexander VI recorded by Pastor, *History of the Popes*, III, p. 345.

The following are accepted by divines as some of the sufficient reasons for petitioning for a dissolution : Incurable incompatibility of temperament, dread of family discord, suspected impotency, civil divorce obtained by one party and danger of incontinency in the other, contagious disease, danger of perversion.

If a dissolution is granted, it includes dispensation from the impediment of crime (if it existed) arising from adultery and promise of marriage or attempted marriage (c. 1053), provided that dispensation had been granted by the Holy See. After dissolution, the fact must be entered in the parochial register, in order that freedom of the parties to marry may be proved in the external forum.

## SECTION 2. Dissolution of Pagan Marriage

### 1. The Pauline Privilege

A legitimate marriage, even if consummated, between persons not baptized can be dissolved in favour of the Faith by virtue of the Pauline privilege. The favour of the Faith consists in the fact that if one party to such a marriage is converted to the Faith and the other party is not converted and does not wish to cohabit at all, or is unwilling to cohabit peacefully without offence to God, the baptized party can enter on a new marriage which, at the moment of being contracted, dissolves the first. The favour of the Faith is derived from one of two sources, either from the direct institution of Christ our Lord promulgated by S. Paul, a view suggested by the Holy Office, July 11, 1866, or from the general scope of Apostolic authority manifested by S. Paul in his dealings with the Corinthians (1 Cor. 7,12 sqq.).

### 2. Conditions for using the Privilege

1. The privilege cannot be used if a baptized person has married one not baptized with dispensation, nor if one party to a Christian marriage has apostatized.

2. Furthermore, valid baptism by water is altogether necessary that the case for the use of the privilege may arise. A catechumen does not enjoy the privilege.



3. Baptism in a non-Catholic Christian sect is sufficient for the application of the privilege, but non-Catholics are not dispensed by the Holy See from the interpellations which sometimes being necessary, require dispensation, and those persons are, therefore, in a less favourable condition than Catholics.

4. If a non-Catholic baptized in his sect marries an unbaptized person, as can validly be done (c. 1070), and subsequently becomes converted to the Catholic Faith, he cannot then use this privilege, for it can only be used on the occasion of Baptism. Wernz-Vidal puts it rather on the ground that the privilege is applicable only in the case of a marriage contracted by unbaptized persons, one of whom is converted and baptized, whilst the other remains infidel.<sup>1</sup>

5. It is necessary that the unbaptized party should be unwilling to be converted to the Faith and then either technically departs altogether, refusing to cohabit with the baptized party, or, though consenting to remain, will not or does not do so without offence to God. These two conditions of the privilege require explanation.

(a) Departure may be interpreted in a wide sense. The unbaptized party departs when, for any reason whatsoever, maliciously or not, voluntarily or not, he or she does not cohabit with the other party, provided the baptized party is not the cause of the separation. If the pagan wife has been abducted and cannot return, even if she expresses willingness to be converted and cohabit, or if she has been sold into slavery by her pagan husband, the latter can use the privilege on conversion. If the baptized party has given just cause for separation, as by adultery, not before but after baptism, the privilege cannot be claimed (c. 1123).

(α) Offence to God is given when the unbaptized person is guilty of grievous sin against Faith or religion, or tries to induce the other to commit grievous sin of any kind, such as idolatry or abuse of marriage. Similarly, offence to God is given when the unbaptized party refuses to have the children educated in the Faith. But no inducement by

<sup>1</sup> Wernz-Vidal, V, n. 631, note (55) c ; cf. Cappello, III, n. 769.



others to sin is sufficient reason for dissolving the marriage. Adultery committed by both partners, the baptized and the unbaptized, is not a sufficient excuse for dissolution, nor is adultery committed by the unbaptized party. Protracted marital life between the two parties, after the conversion of one only, does not extinguish the right to the privilege, if the conditions are fulfilled (c. 1124). The mere refusal on the part of the unbaptized person to be converted to the Faith is not, of itself, sufficient ground for the use of the privilege, unless there is danger of perversion or offence to God in other respects.

6. A further condition for the use of the privilege is that the unbaptized party should be asked two questions, namely, whether he or she wishes to be converted to the Faith, and if not, whether he or she is willing to cohabit peacefully without offence to God. These interpellations must always be made, unless the Apostolic See has declared otherwise (c. 1121). For the lawful use of the privilege, these questions are certainly necessary ; for the valid use of it they appear to be necessary, unless the Holy See has granted dispensation from them. Canon 1121 states that before the party who is converted and baptized validly contracts marriage, he must question the unbaptized party. Since the use of the privilege is possible only after the baptism of one of the parties, it is clear that the questions must be asked after such baptism, unless, in a particular case, the Holy See permit otherwise. When the questions have been asked once without success, there is no obligation, apart from that of charity, to repeat them, however long delayed marriage may be. As a general rule, the questions must be made directly, in at least a summary and extra-judicial form, by the authority of the Ordinary of the converted party. The same Ordinary must grant the unbaptized party if so requested, a period of grace for deliberation with the warning, however, that if the period elapses without reply, a negative reply will be presumed. But the questions may be validly put privately by the converted party, and even lawfully, if the prescribed form cannot be observed, but then proof for the external forum that they were in fact

asked must be supplied by at least two witnesses or by some other legitimate method.

If the interpellations have been omitted by dispensation of the Holy See, or if the unbaptized party has given a negative reply either expressly or tacitly, the baptized party has the right to contract marriage with a Catholic, unless, as stated above, just cause for departure had been given after baptism by the baptized party to the other. The interpellations are sometimes set aside by the Holy See for a just reason, when, for example, the interpellations cannot be made, or it would be useless or seriously dangerous to make them. The case would frequently arise in pagan countries, when a husband has gone to live elsewhere and it is not known which one of several women he really married. It is to be observed that if the interpellations have been legitimately set aside, a fresh marriage contracted is valid even if it become known that the unbaptized party was unable, at the time, to express his or her wishes, and was converted when the convert married.<sup>1</sup> The previous bond is dissolved when the baptized party contracts a new valid marriage.

In cases of doubt, the privilege of the Faith, as explained, enjoys the favour of law (c. 1127). The doubt may concern the validity of a pagan marriage, the precedence in time amongst the wives of a polygamous pagan, the validity of baptism, the sincerity of the unbaptized party, the sufficiency of the reason for dispensation from the interpellations or for awaiting the reply, or the fulfilment of all necessary' conditions.

The Pauline privilege cannot be extended to a marriage of two non-Catholics doubtfully baptized, the doubt remaining unsettled. The Ordinary cannot apply it to either party to a marriage contracted by an unbaptized person and one who, being a non-Catholic, is doubtfully baptized.<sup>2</sup>

### 3. Particular Papal Dispensations

Three Constitutions were given for particular places to regulate the marriages of converted pagans. The force of

<sup>1</sup> S.O.. Feb. 4, 1891.

\* S.O., June 10, 1937.



these Constitutions is extended to other places also under like circumstances.

1. Pope Paul III allowed one who, before conversion, had several wives in accordance with national or tribal custom to retain, after his conversion, that one whom he preferred, if he did not remember which was his first.

2. S. Pius V allowed those polygamous Indians who received baptism to retain the wife who received baptism as a legitimate wife, and to dismiss the others.

3. Pope Gregory XIII granted those Africans who had been shipped to America by Spaniards and Portuguese and were thus separated from their consorts to contract a fresh marriage with any Catholic, provided that the said consorts could not be legitimately notified, or if notified, did not express their wishes within the stated period.

#### Note on Dissolution of the Natural Bond

The question has been raised, and the answer is of some practical importance, namely, whether the Church has wider powers over the bond of natural marriage than those included in the exercise of the Pauline privilege. Some papal dispensations are cited which seem to afford an affirmative answer. The Bishop of Helena submitted the case of A, an unbaptized non-Catholic, who had married B, a baptized Anglican in 1919. In 1920, A petitioned for and got a civil divorce from B. Shortly after, A wished to be converted and to marry a Catholic; B had already married another person. The petition to the Holy See was for a dissolution from the natural bond of the first marriage. The petition was granted.<sup>1</sup>

Another case is cited. In 1919, A, an unbaptized man, civilly married B, a non-Catholic, baptized in a heretical sect. A obtained a civil divorce from B. He wished to become a Catholic and to marry a Catholic, C. The Pope approved a resolution of the Holy Office to the effect that A, after conversion and baptism, might marry C.<sup>a</sup>

<sup>1</sup>cf. *Eccles. Rev.*, Feb., 1925; *L'Ami du Clergé*, 1925, p. 409; *Clergy Review*, Dec., 1932, p. 504; Cappello, III, n. 792, Bouscaren, I, p. 553.

<sup>a</sup> April 1926, private: quoted in Bouscaren, *Canon Law Digest*, 2,



## CHAPTER XX

### DISCONTINUANCE OF COHABITATION (cc. 1128-1132)

#### SECTION 1. Discontinuance of Cohabitation

In this chapter, divorce from the bond of marriage is not dealt with. The subject treated is the discontinuance of married life though the bond persists. Married persons are bound to live their common conjugal life unless some just reason excuses them from doing so (c. 1128). Common conjugal life comprises living in the same home, taking meals together, and sleeping together, unless by free mutual consent temporary separation is wished. That there can be a legitimate reason for discontinuing conjugal life is expressly asserted in Holy Scripture (1 Cor. 7, 11 ; Mt. 19, 29); it is sanctioned by the Church, both in its general teaching and in the definition which it has made in the Council of Trent, to the effect that the Church does not err when it decrees that separation of the married may be justified for many reasons.<sup>1</sup>

Our Lord mentioned adultery alone as a reason for separation because it is the chief reason for permanent separation, and the fidelity that is completely violated by the adultery of one party can never be restored in full. Two other offences against conjugal justice, namely sodomy with a third party, and bestiality, are also sufficient reasons for perpetual separation, for in those sins, no less than in adultery, the very object of marriage, viz., the legitimate intercourse is completely repudiated. There are reasons justifying perpetual separation and other reasons justifying temporary separation. These two sets of reasons will now be examined.

#### SECTION 2. Reasons for permanent Separation

I. Adultery is the first justification. This reason is derived from Natural law, divine positive law and Ecclesias-

<sup>1</sup> Cone. Trid., s. 24, c. 8.

tical law. The adultery must, however, be formal (that is, deliberate and conscious), consummated (with or without semination), committed against the will and without the connivance or approval or instigation of the innocent party, not condoned either expressly or tacitly, not virtually balanced by adultery of both parties, and certainly established. Sufficient instigation to adultery may be present in the habitual refusal of cohabitation. Tacit condonation is present when the innocent party, knowing of the adultery, admits the guilty party to continued conjugal life. Condonation is presumed unless the innocent party has expelled or separated from the adulterous party within six months after coming to the knowledge of the fact, or unless the guilty party has been denounced. If that period has elapsed without action taken, the innocent party is obliged to prove that during the six months conjugal relations were discontinued, or, if not, were continued under duress or in ignorance of the right of separation. The innocent party may sever conjugal relations spontaneously or by virtue of sentence by the ecclesiastical judge ; the latter is necessary if the adultery is doubtful. Spontaneous separation is justified in the case of notorious adultery, though it would be more prudent to sue for ecclesiastical sentence. If the adultery was occult, the innocent party has the right in conscience to separate, but usually the ecclesiastical sentence should be sought, lest, in the impossibility of proving the adultery, there should arise a conflict between the forum of conscience and the external forum. After separation for the crimes mentioned above, conjugal life need never be resumed, but the innocent party may receive back or recall the guilty party, who is bound to return if justly recalled, unless, of course, with the consent of the innocent party, a state of life has been entered upon incompatible with continued conjugal life.

2. Conjugal life may be permanently severed by mutual free consent. This would be verified in cases where one or other entered religious life or received Sacred Orders, in each case with Apostolic dispensation (cc. 542, 987) and with the full and free consent of the other party.



## SECTION 3. Some Reasons for temporary Separation\*

When there is not a canonical reason for permanent separation, there may be good reasons for temporary separation. The following are enumerated in the canons :

1. When one party has passed to a non-Catholic sect, that is, has formally joined the ranks of heretics, schismatics or infidels.

2. When one party educates the offspring in heresy, or schism, or without any religion.

3. When one party leads a scandalous and disgraceful life.

4. When one party gravely endangers the spiritual or bodily welfare of the other, the former, by constant provocation to sin, such as offences against faith or chastity, the latter, by the grave likelihood of imparting a serious disease, such as syphilis, or by having wilfully contracted a serious disease to the grave detriment of the other. Innocent infection by a disease may also be sufficient reason for temporary refusal of intercourse, if it would be a grave inconvenience to the other party.

5. When one party makes life intolerable for the other by savagery and cruelty, and constant quarrelling (not merely bickering) and deeply rooted aversion and hatred.

The reasons set out above are given by the canons as examples of reasons for temporary separation, and though each case must be judged on its own merits by the local Ordinary, nevertheless, separation may be resorted to spontaneously if the reason is certainly established and there would be danger in delay.

## SECTION 4. Resumption of Conjugal Life

When the reason for the temporary severance of conjugal life has ceased to exist, the parties are bound to resume their life in common, except that if the local Ordinary has

<sup>1</sup> Separation is to be decreed in administrative form unless the Ordinary decide otherwise *ex officio*, or at the instance of the parties (P.C.C.J. on c. 1131, June 25, 1932, A.A.S., 1932, p. 284). Causes which justify separation are never to be regarded as causes which preclude the re-opening of the case (P.C.C.J., April 8, 1941).



assigned the period of separation the parties may adhere to his prescription, and if no limit has been fixed, they may wait for his ruling (c. 1131, 2). If, therefore, no judicial sentence has been given, the party who had given reason for temporary separation may demand resumption of married life when the reason has ceased to exist.

#### SECTION 5. Custody of the Children

In cases of separation, the children, if any, of the marriage are to be brought up by the innocent party ; but if one party is Catholic and the other not a Catholic, the children are to be brought up by the Catholic party, unless in either case the Ordinary decide otherwise, having in view the good of the children, and their Catholic education being always secured (c. 1132).

#### Pastoral Note

There is no doubt that the pastor will come across cases in which he should dissuade married parties from separating, even though one may have the right to do so. Experience teaches the confessor that he will rightly be very slow indeed to advise separation, since in the case of the young, it will lead to irregularities. Both confessor and pastor will always refer a case to the Ordinary, unless, of course, there is great danger in delay. It is common knowledge that the most unpromising cases yield to treatment, and married people who have been influenced by love to contract marriage retain their love for their partners to a degree which the unmarried cannot appreciate, and under circumstances the most distressing and even revolting, for the wife will hardly ever give up her husband. The prudent confessor, in his zeal for settling disputes, should never come between husband and wife, for if he does, he will incur the hatred of both.

CHAPTER XXI

RECTIFICATION OF INVALID MARRIAGES

SECTION 1. Convalidation in General

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When two parties are apparently married but in reality not truly so owing to some existing diriment impediment, a decree of nullity may be sought, or the pastor may in rare cases and when there is no scandal leave them undisturbed in conscience, or he may advise them to live continent lives, as though they were brother and sister, if such procedure is prudent, or, if they wish, he may proceed to rectify the invalid marriage.

• B »  
A »

An invalid marriage, if capable of being regularized, may be rendered valid either by simple convalidation or by regularizing the original consent (*sanatio in radice*). The two outstanding differences between these two methods are, first, that in the former a new consent must be given, but not in the latter; and secondly, that the former enjoys its canonical effects from the moment of convalidation, whereas the latter enjoys them retrospectively, as it were, namely, from the moment when the invalid marriage was contracted.

SECTION 2. Simple Convalidation

I. When a marriage is invalid owing to an annulling impediment that is capable of dispensation, in order that the marriage may be convalidated, it is necessary that the impediment should either cease to exist or should be dispensed, and that consent should be renewed at least by that party who is conscious of the impediment (c. 1133, 1). An impediment can cease to exist either automatically (as age, bond), or if the parties see to it that it does (as, defect of Baptism, abduction), or by dispensation.

Consent must be renewed by the party (or parties) conscious of the impediment. This renewal is prescribed by Ecclesiastical law and is essential for the validity of the

marriage (c. 1133, 2), even if the impediment has automatically ceased to exist. This renewal of consent must be a new absolute and formal act of the will in respect of a marriage known to have been invalid and now convalidated (c. 1134), and must be elicited with the knowledge of the nullity of the previous marriage.

Where the impediment was a public one (i.e., public of its nature or capable of proof in the external forum), consent must be renewed by both parties in the way prescribed by law (c. 1135, 1). Where the impediment is occult, i.e., not capable of proof in the external forum, or known to no more than the parties themselves, and the confessor as such, and only one other possible witness, it is sufficient if the consent is renewed by both parties privately, that is, without the presence of parish priest and witnesses, and secretly, that is, without the knowledge of others. The consent must then be external, explicit, and mutually expressed. When the impediment is so occult that it is known to one of the parties alone and to no one else, it is sufficient if that party renew consent privately and secretly, provided that the previous consent of the other party persists (c. 1135, 3). Any method of renewing consent in this case is sufficient, such as continued conjugal life, intercourse with conjugal intent, merely internal act of the will. Some writers maintained that this consent must be externally manifested to the other party, since the Sacrament requires this as an external sign. The view cannot now be maintained.<sup>1</sup>

2. When a marriage is invalid owing to defect of true consent, it must be convalidated by a new and valid consent (c. 1136, 1). Consequently, the cause of the defect (such as fear) must cease to operate, the former marriage must be known to have been invalid, and consent must be mutual. Therefore, if neither party consented, each must now consent; if one party only failed to consent, that party alone must now consent (c. 1136, 1), and the consent of the other party must persist. If the defect of consent was wholly internal, a new act of internal consent is sufficient (c. 1136, 2).

<sup>1</sup> Cappello, III, n. 845.



If the defect of consent was external, a new consent must be externally expressed and in the form prescribed by law in case of the defect having been public (c. 1136, 3), that is, if at least two others beside the parties were aware of the defect. Thus, a marriage celebrated under grave fear that is publicly known, remains invalid until it is publicly convalidated in the due form. If the defect of consent was external but occult, a new consent must be expressed externally in a private and secret manner as explained above.

3. When a marriage is invalid owing to defect of canonical form, it must be newly contracted in the legitimate form for simple convalidation. This simple convalidation may take place publicly, but in this country it usually takes place privately in the sacristy. To prevent scandal, if scandal has arisen or is likely to arise, the fact of convalidation should be made known somehow. But the assisting priest must take care to know and observe diocesan regulations issued by the Ordinary for the rectification of such marriages. If he disregards the regulations, he may be rendering himself liable to prosecution for a felony for solemnizing a marriage in a place other than the registered building specified in the marriage license, or in the absence of the registrar of the district.<sup>1</sup>

### SECTION 3. Retrospective Convalidation

i. An invalid marriage can be convalidated without any renewal of the consent formerly given by the parties. The consent which had been juridically ineffectual, though naturally sufficient, can be rendered effectual by the Supreme Authority. The consent being, as it were, the root of marriage, is healed, and this convalidation is termed *sanatio in radice*. It is, therefore, defined in the canons as that convalidation of marriage which carries with it, besides dispensation from or cessation of the impediment, dispensation from the law that prescribes renewal of consent, and also the force, by legal fiction, of granting retrospectively all canonical effects of the marriage from its inception (c. 1138, i). As the Church imposes the law, it can dispense in

<sup>1</sup> cf. Marriages Act. 1836, sections 18 and 39.

it. This convalidation is normally complete. It is, however, sometimes partial, as when canonical effects are legally sanctioned for the offspring after the death of one party or of both parties, or when the retrospective force does not extend to the inception of the marriage, but only to some time subsequent to it (c. 1138, 2). This convalidation is effectual from the moment of the granting of the favour.

2. The dispensation from the law of renewal of consent can be granted by the Church even without the knowledge of either or of both of the parties (c. 1138, 3) ; it may be granted even against the will of one of the parties or (probably) of both, if the other conditions, viz., those in respect of consent persisting, are verified ; it may be granted in favour of offspring after the death of both parties.

3. The condition that is necessary for retrospective convalidation is that the marriage should have been entered upon with a consent, of its nature sufficient, by both parties, but one that was canonically ineffectual, either owing to an ecclesiastical annulling impediment, or to defect of the legitimate canonical form of celebration, and provided that the consent persists. The Church deals only with its own canonical impediments. It does not convalidate unions entered upon with an impediment of Natural or of divine positive law, even though the impediment should have ceased to exist, and not even from the moment at which it did cease to exist (c. 1139). Furthermore, the Church cannot rectify a consent which never existed, or ceased to exist. But if consent was absent at first but given later, the marriage can be rectified from the moment of consent (c. 1140).

NOTE.—The development of *sanationes* is as follows : Pope Boniface VIII (1301) granted a *sanatio* to Queen Mary of Castile after the death of her husband, Sanchez IV, from the third degree of consanguinity. He also granted a *sanatio* to Ildefonso, King of Portugal, and the Countess of Poland. Pope Julius III (»554) granted *sanationes* for marriages in England. Pope Clement VIII (1595) for Greek marriages owing to consanguinity in the fourth degree. Pope Benedict XIV (1741) for clandestine marriages in Holland. Pope Pius VII (1856) for Austrian marriages ; again for a marriage between collaterals, though impotence had supervened. Pope Leo XIII (1892) for some heretical marriages. Pope Pius X (1909) for mixed marriages in Germany and Hungary, and again for marriages up to 1912, invalid owing to the impediment of *crimen*.



## CHAPTER XXII

### REMARRIAGE (cc. 1142, 1143)

Remarriage is valid and lawful, all canonical prescriptions being observed, but chaste widowhood is more honourable (c. 1142). The states of virginity and chaste widowhood are definitely extolled by S. Paul (1 Cor. 7, 8, 38, 40 ; 1 Tim. 5, 3), and are more perfect states of Christian life than the married state. But marriage may be better in particular cases for the allaying of concupiscence, which otherwise would not or could not normally be tempered. Therefore it is better to marry than to be on fire with passion. A second and a third marriage would often, though not necessarily, connote want of restraint, and would not typify so well the union of Christ with His Church. A remarriage induces a canonical irregularity (c. 984).

A remarriage may always be blessed with the simple ritual form, but the solemn blessing is not given to a widow whose former marriage had been solemnly blessed. If her former marriage had not been solemnly blessed, her remarriage may be blessed. The Roman Ritual, dealing with such cases, bids the pastor not to give the nuptial blessing to parties who remarry and who received the blessing in a former marriage, whether it is the woman or the man who remarries, but adds that if it is the man only who is remarrying, the custom, if there is one, of blessing such a marriage may be retained.<sup>1</sup> There is undoubtedly a universal custom now of giving the blessing in a remarriage, provided the woman has not previously received the blessing. The silver, golden, and diamond jubilees of a marriage may receive a special blessing, and if Mass is said in thanksgiving, the *Te Deum* may be added after the Mass.

<sup>1</sup> *Rit. Rom.*, tit. vii, c. 1, n. 18.



## CHAPTER XXIII

### CIVIL MARRIAGE AND DIVORCE

#### SECTION 1. *Civil Marriage.*

Civil marriage, as commonly understood today outside the Church, means the matrimonial contract entered upon only in presence of the representative of the State and two witnesses. Since, however, the Church has laid down laws concerning the celebration of marriages where one or both of the contracting parties are Catholics, and since these laws bind under pain of invalidity, the Church does not recognize the civil contract made by a Catholic as a valid marriage, nor the right of the State to declare Catholic marriages valid in consequence of the mere civil form, or invalid for want of it. If the State insisted on such civil form merely for the securing of civil rights, without any reference to the true contract, the Church would raise no objection, for the State would then be acting within the limits of its power. But most modern civil codes regard ecclesiastical marriage as contrasted with civil marriage in the light of a mere religious ceremony. In this country, certain ministers of religion are allowed by law to act as the civil officials, as in Anglican churches and in those Catholic churches where the local Ordinary has accepted the favour of the law in that respect. In other places of worship, registered for marriages, the presence of the civil registrar is essential under severe legal penalties, to which a minister of religion would be liable if he celebrated a marriage without the civil certificate and the presence of the registrar.

The question of the lawfulness for Catholics of a civil marriage in this country now presents no difficulty. An attempted marriage in the Registry Office is now invalid. The State has not yet insisted on the civil form preceding the ecclesiastical form. When it does, those questions will arise in this country which have arisen in some other countries as to the correct point of view to be adopted by Catholics.

In England, in Catholic churches, the civil form succeeds the ecclesiastical form, and the civil registrar usually allows the priest to read out the civil formula to each of the married parties. Catholics understand that they are truly married when they have performed the ecclesiastical rite, and that the civil form is legally necessary for securing recognition by the State of their marriage.

## SECTION 2. Civil Divorce

Civil authority claims the right to pronounce decrees of judicial separation and divorce. Catholics may apply to the Civil Courts for a decree of judicial separation after submitting the case to the ecclesiastical authorities. They may also apply for declaration of nullity after submitting their case to their ecclesiastical authorities, and getting from them such a declaration. It is obvious that Catholics may not under any circumstances petition for an absolute divorce with the intention of remarriage. Catholics may, however, petition for a divorce in the Civil Courts in order merely to obtain the civil effects of a civil divorce, but they should first submit the case to the local Ordinary. Since Catholics may, with due permission, do these things, a Catholic judge may pronounce a decree of civil divorce, and Catholic lawyers and solicitors may undertake such cases, but with due submission to ecclesiastical authorities, who will be the best judges as to whether or not grave scandal might arise from such a practice.

The doctrine here set forth is held to be safe in practice in this country until the Church issues a prohibition against it,<sup>1</sup> and it seems reasonable to say that a judge merely declares what the law is, and barristers present their cases in accordance with the law, and so far as it affects the external relations of citizens without any reference to religion or conscience. If the State were openly hostile to religion, as the Soviet of Russia, the Church, doubtless, would not tolerate the presence of Catholic judges and barristers in Divorce Courts.

<sup>1</sup>

<sup>1</sup> cf. Slater, II, p. 209 ; Cappello, III, n. 833 sqq.

It is of interest to Catholics to note that in English law a decree *nisi* can be converted into a decree of judicial separation on application. In a case before the Courts in November, 1936, in reference to a decree *nisi* granted on November 22, 1935, it was submitted that the petitioner, being a Roman Catholic, and by reason of legal incidents arising out of settled property, had changed her mind. The President rescinded the decree *nisi* and pronounced a decree of judicial separation in the petitioner's favour.

### SECTION 3. Registrar of Marriages

If a Catholic has the office of registrar of marriages, there would be no difficulty in his witnessing the marriages of non-Catholics. In cases where a Catholic wished to be married in the Registry Office, though the attempted marriage would be invalid from defect of canonical form, a Catholic registrar could be witness to the civil marriage, provided that he had a serious reason for so doing and that there was no grave public scandal. Catholics could also be witnesses to such civil marriages for a grave reason and apart from scandal. The intention must be to witness a civil form only. This view is now generally held, though there has been a good deal of controversy about the matter.<sup>1</sup> It should be added that a Catholic who wishes to hold the office of registrar of marriages should certainly consult his parish priest, who will have to refer the matter to the local Ordinary.

<sup>1</sup> Cappello, III, n. 734. Even in the case of divorced persons remarrying before the death of their consort(s), a registrar may, for grave reasons and apart from scandal, witness such marriages.



## APPENDIX

### Papal Teaching on Divorce

Pope Pius XI thus expresses the teaching of the Church on divorce in the Encyclical letter, *Casti Connubii*.

“ The advocates of the neo-paganism of today continue by legislation to attack the indissolubility of the marriage bond, proclaiming that the lawfulness of divorce must be recognized and that the antiquated laws should give place to a new and more humane legislation. Many and varied are the grounds put forward for divorce, some arising from the wickedness and guilt of the persons concerned, others arising from the circumstances of the case ; the former they describe as subjective, the latter as objective ; in a word, whatever might make married life hard or unpleasant. They strive to prove their contentions regarding these grounds for the divorce legislation they would bring about by various arguments.

“ Thus, in the first place, they maintain that it is for the good of either party that the one who is innocent should have the right to separate from the guilty, or that the guilty should be withdrawn from a union which is unpleasing to him and against his will. In the second place, they argue, the good of the child demands this, for either it will be deprived of a proper education or the natural fruits of it, and will too easily be affected by the discords and shortcomings of the parents, and drawn from the path of virtue. And, thirdly, the common good of society requires that these marriages should be completely dissolved, which are now incapable of producing their natural results, and that legal separations should be allowed when crimes are to be feared as the result of the common habitation and intercourse of the parties. This last, they say, must be admitted to avoid the crimes being committed purposely with a view to obtaining the desired sentence of divorce for which the judge can legally loose the marriage bond, as also to prevent people from coming before the Courts when it is obvious

## PAPAL TEACHING ON DIVORCE

from the state of the case that they are lying and perjuring themselves—all of which brings the Court and lawful authority into contempt. Hence the civil laws, in their opinion, have to be reformed to meet these new requirements, to suit the changes of the times and the changes in men's opinions, civil institutions and customs. Each of these reasons is considered by them as conclusive, so that all taken together offer a clear proof of the necessity of granting divorce in certain cases.

“ Others, taking a further step, simply state that marriage, being a private contract, is like other private contracts, to be left to the consent and good pleasure of both parties, and so can be dissolved for any reason whatsoever.

“ Opposed to all these reckless opinions, Venerable Brethren, stands the unalterable law of God, fully confirmed by Christ, a law that can never be deprived of its force by the decrees of men, the ideas of a people or the will of any legislator : ‘ What God hath joined together, let no man put asunder.’ And if any man, acting contrary to this law shall have put asunder, his action is null and void, and the consequence remains, as Christ Himself has explicitly confirmed : ‘ Everyone that putteth away his wife and marrieth another committeth adultery ; and he that marrieth her that is put away from her husband committeth adultery.’ Moreover, these words refer to every kind of marriage, even that which is natural and legitimate only ; for, as has already been observed, that indissolubility by which the loosening of the bond is once and for all removed from the whim of the parties and from every secular power is a property of every true marriage.

“ All the arguments that are brought forward to prove the indissolubility of the marriage tie can equally be applied to excluding not only the necessity of divorce, but even the power to grant it ; while for all the advantages that can be put forward for the former, there can be adduced as many disadvantages and evils which are a formidable menace to the whole of human society.

“ To revert again to the expressions of our predecessor, it is hardly necessary to point out what an amount of good is



## MARRIAGE

involved in the absolute indissolubility of wedlock, and what a train of evils follows upon divorce. Whenever the marriage bond remains intact, then we find marriages contracted with a sense of safety and security, while, when separations are considered and the dangers of divorce are present, the marriage contract itself becomes insecure, or at least gives ground for anxiety and surprises. On the one hand, we see a wonderful strengthening of good will and co-operation in the daily life of husband and wife, while, on the other, both of these are miserably weakened by the presence of a facility of divorce. Here we have at a very opportune moment a source of help by which both parties are enabled to preserve their purity and loyalty ; there we find harmful inducements to unfaithfulness. On this side we find the birth of children and their tuition and upbringing effectively promoted, many avenues of discord closed amongst families and relations, and the beginnings of rivalry and jealousy easily suppressed ; on that, very great obstacles to the birth and rearing of children and their education, and many occasions of quarrels, and seeds of jealousy sown everywhere. Finally, but especially, the dignity and position of women in civil and domestic society are re-instated by the former ; while by the latter, they are shamefully lowered and the danger is incurred ' of their being considered outcasts, slaves of the lust of men.'

“ To conclude with the important words of Leo XIII : ‘ Since the destruction of family life and the loss of national wealth are brought about more by the corruption of morals than by anything else, it is easily seen that divorce, which is born of the perverted morals of a people, and leads, as experience shows, to vicious habits in public and private life, is particularly opposed to the well-being of the family and of the State. The serious nature of these evils will be the more clearly recognized, when we remember that, once divorce has been allowed, there will be no sufficient means of keeping it in check within any definite bounds. Great is the force of example, greater still that of lust ; and with such incitements it cannot but happen that divorce and its consequent setting loose of the passions should spread daily,



and attack the souls of many like a contagious disease or a river bursting its banks and flooding the land.'

“ These words of Pope Leo XIII were penned fifty years ago, and they are confirmed by the daily increasing corruption of morals and the unheard-of degradation of the family in those lands where Communism reigns unchecked.”<sup>1</sup>

The following sections of the Matrimonial Causes Act of 1937 may be of interest in the present context.

1. No petition for divorce may be presented before three years after the date of a marriage, provided that a judge of the High Court may allow a petition before that period has elapsed on the grounds of exceptional hardship or depravity.

2. The grounds for a petition for divorce are these. Adultery by the respondent since the date of the marriage : desertion of the petitioner by the respondent without cause for at least three years immediately preceding the presentation of the petition ; cruelty of the respondent towards the petitioner ; incurably unsound mind of the respondent and subjection to care and treatment for at least five years immediately preceding presentation of the petition ; in the case of a wife, her husband's crimes of rape, sodomy, or bestiality.

3. New grounds for a decree of nullity are these. Non-consummation of marriage by wilful refusal of the respondent to consummate ; unsoundness of mind, mental deficiency, or recurrence of fits of insanity or epilepsy at the time of marriage ; communicable venereal disease at the time of marriage ; pregnancy of the respondent at the time of marriage by some person other than the petitioner. But the grounds (with the exception of the first) are qualified by the provision that the petitioner was, at the time of marriage, ignorant of the facts alleged, that proceedings were instituted within a year from the date of marriage and that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the grounds for a decree.

<sup>1</sup> The Sacred Congregation *de Propaganda Fide* (1674), speaking of marriages in China, stated : “ The philosopher Confucius bequeathed to his school five reasons for divorce, namely, a woman's loquacity, supervening leprosy, sterility, theft, disobedience to a father-in-law. Where any of these existed, a husband could rescind the marriage, and the woman was herself free to marry another.” The reader may smile at these grounds for divorce, but in the Majority Report of the Divorce Commission in this country, 1912, the grounds for divorce suggested were : Cruelty, habitual drunkenness, wilful desertion for three years without reasonable cause, neglect by the husband to provide reasonable maintenance for the wife or her infant children whom he is legally liable to maintain. The members of the Commission have not made very much advance on Confucius, for in both cases, there is the same lack of finality. The Jews, before the time of Christ, had pushed the freedom of divorce to absurd lengths much as the Russian Soviets did some years ago. Such grounds for divorce destroy family life, and would consequently destroy the State itself.

## CHAPTER XXIV

### THE RIGHT USE OF MARRIAGE

#### SECTION 1. The Teaching of Pope Pius XI

\* We must not omit to remark that since the duty entrusted to parents for the good of their children is of such high dignity and of such great importance, every use of the faculty given by God for the procreation of new life is the right and the privilege of the marriage state alone, by the law of God and of nature, and must be confined absolutely within the sacred limits of that state.

“ That mutual familiar intercourse between the spouses themselves, if the blessing of conjugal faith is to shine with becoming splendour, must be distinguished by chastity, so that husband and wife bear themselves in all things with the law of God and of nature, and endeavour always to follow the will of their most wise and holy Creator with the greatest reverence towards the work of God.

“This conjugal faith, however, which is most aptly called by S. Augustine the ‘ faith of chastity,’ blooms more freely, more beautifully and more nobly when it is rooted in that more excellent soil, the love of husband and wife, which pervades all the duties of married life and holds pride of place in Christian marriage. For matrimonial faith demands that husband and wife be joined in an especially holy and pure love, not as adulterers love each other, but as Christ loved the Church . . . The love, then, of which We are speaking is not that based on the passing lust of the moment, nor does it consist in pleasing words only, but in the deep attachment of the heart which is expressed in action, since love is proved by deeds.

“By this same love it is necessary that all the other rights and duties of the marriage state be regulated as the words of the Apostle : ‘ Let the husband render the debt to the wife, and the wife also in like manner to the husband ’ express not only a law of justice but of charity.

“ Since, in order that the deceits of the enemy may be



avoided, it is necessary first of all that they be laid bare, since much is to be gained by denouncing these fallacies for the sake of the unwary, even though We prefer not to name these iniquities ‘as becometh saints,’ yet for the welfare of souls We cannot remain altogether silent.

“To begin at the very source of these evils, their basic principle lies in this, that matrimony is repeatedly declared to be not instituted by the Author of Nature nor raised by Christ the Lord to the dignity of a true Sacrament, but invented by man . . . The evil of this teaching is plainly seen from the consequences which its advocates deduce from it, namely, that the laws, institutions, and customs by which wedlock is governed, since they take their origin solely from the will of man, are subject entirely to him, hence can and must be founded, changed and abrogated according to human caprice and the shifting circumstances of human affairs ; that the generative power which is grounded in nature itself is more sacred and has wider range than matrimony, hence it may be exercised both outside as well as within the confines of wedlock, even to the exclusion of the purposes of matrimony, as though to suggest that the licence of a base fornicating woman should enjoy the same rights as the chaste motherhood of a lawfully wedded wife.

“And now, Venerable Brethren, We shall explain in detail the evils opposed to each of the benefits of matrimony. First consideration is due to the offspring, which many have the boldness to call the disagreeable burden of matrimony and which they say is to be carefully avoided by married people, not through virtuous continence (which Christian law permits in matrimony when both parties consent) but by frustrating the marriage act. Some justify this criminal abuse on the ground that they are weary of children and wish to gratify their desires without their consequent burden. Others say that they cannot on the one hand remain continent nor on the other can they have children because of the difficulties whether on the part of the mother or on the part of the family circumstances. But no reason, however grave, may be put forward by which anything intrinsically



## MARRIAGE

against nature may become conformable to nature and morally good. Since, therefore, the conjugal act is destined primarily by nature for the begetting of children, those who, in exercising it, deliberately frustrate its natural power and purpose, sin against nature and commit a deed which is shameful and intrinsically vicious.

“Since, therefore, openly departing from the uninterrupted Christian tradition, some recently have judged it possible to declare another doctrine regarding this question, the Catholic Church, to whom God has entrusted the defence of the integrity and purity of morals, standing erect in the midst of the moral ruin which surrounds her, in order that she may preserve the chastity of the nuptial union from being defiled by this foul stain, raises her voice in token of her divine ambassadorship and through Our mouth proclaims anew : Any use whatsoever of matrimony exercised in such a way that the act is deliberately frustrated in its natural power to generate life is an offence against the law of God and of nature, and those who indulge in it are branded with the guilt of a grave sin.

“Holy Church knows well that not infrequently one of the parties is sinned against rather than sinning, when for a grave cause he or she reluctantly allows the perversion of the right order. In such a case there is no sin, provided that, mindful of the law of charity, he or she does not neglect to seek to dissuade and to deter the partner from sin. Nor are those considered as acting against nature who in the married state use their right in the proper manner, although, on account of natural reasons either of time or of certain defects, new life cannot be brought forth. For in matrimony as well as in the use of matrimonial rights there are also secondary ends such as mutual aid, the cultivating of mutual love, and the quieting of concupiscence, which husband and wife are not forbidden to consider so long as they are subordinated to the primary end and so long as the intrinsic nature of the act is preserved.

“We are deeply touched by the sufferings of those parents who in extreme want, experience great difficulty in rearing their children. However, they should take care lest the

calamitous state of their external affairs should be the occasion for a much more calamitous error. No difficulty can arise that justifies the putting aside of the law of God which forbids all acts intrinsically evil. There is no possible circumstance in which husband and wife cannot, strengthened by the grace of God, fulfil faithfully their duties and preserve in wedlock their chastity unspotted. This truth of Christian Faith is expressed by the teaching of the Council of Trent : ‘ Let no one be so rash as to assert that which the Fathers of the Council have placed under anathema, namely, that there are precepts of God impossible for the just to observe. God does not ask the impossible, but by His commands, instructs you to do what you are able, to pray for what you are not able that He may help you? ’

## SECTION 2. General Summary of Catholic Teaching

1. The right to marital intercourse is the primary object of the contract of marriage, and so essential, that it cannot be excluded from the contract by either party. Sexual intercourse is the only means instituted by God for the propagation of the race ; it is, therefore, lawful, honourable, morally good, and may be meritorious. It cannot be withheld by one party from the other without a grave reason, for the rendering of marital dues is an obligation of justice, necessarily undertaken by the very fact of entering into the married state. Consequently, it is grievously wrong for married persons to live apart from one another, except by mutual consent or for clearly specified and grave reasons ; to refuse marital relations for a whim or for minor inconveniences is to violate a grave contract for insufficient reasons, and to expose the partner not infrequently to sin.

2. Since it is the rendering of marital dues not actual generation that is the object of the contract, the conjugal act is permissible even when generation cannot ensue, as in the barren and the aged. It may be employed for the allaying of concupiscence, for this also is one of the purposes why marriage was instituted. It may be employed during pregnancy if no harm results to wife or conceived offspring.

3. That the conjugal act may be done without sin, it



must be done in the natural way, for nature, i.e., God, gave the power to man and woman of exercising all their functions, as those of speech, sight, bodily activity and sex, that they might be exercised in a way calculated to produce their respective effects, if natural laws permit the effects being realized. To exercise bodily functions contrary to the will of God and in ways that pervert His divine intentions is an act of gross inordination and practical rebellion. We know God's intentions when we know the purposes of our natural gifts. To pervert those gifts is, in effect, to use them for personal gratification contrary to the divine purpose. To employ the sexual function for self-gratification in such a way that its natural purpose is artificially frustrated in the very activity' of the function, is a perversion of that function. By such perversion, the object of the function, namely, the giving of life, is entirely excluded, and since this object is on an unique plane of importance, the perversion is necessarily grave. Every act of contraception is, therefore, a grievous sin. The principle is clear to everyone in the case of unnatural vice, and if the reprobation of this vice is scrutinized, it will be evident that the sexual act between husband and wife, when not performed in the natural way, is to be equally reprobated since the act of sexual functioning in man, if exercised unnaturally even in the married state, is as much a perversion of nature as is unnatural vice. Married people who practise contraception delude themselves in supposing that the married state condones what is unnatural. Consequently, it is always a grievous sin to exercise the sexual function in such a way that, by the interposition of a mechanical contrivance or by the practice of onanism, conception is rendered either impossible or improbable. This statement does not imply that where conception is naturally impossible, as, v.g., during pregnancy, the sexual function may be employed in a way contrary to its natural and normal activity. Contraceptive acts in the case of the pregnant, the barren, the sterilized, are equally sinful. It is the misuse of the sexual act itself, even though it could not produce its otherwise natural effect, that is a grievous sin.



## CHAPTER XXV

### NOTANDA PRO CONFESSARIIS

#### SECTIO 1. De Recto Usu Matrimonii

Licet marito post suam ejaculationem sese retrahere, nam nil tunc fit contra naturam. Ideo, non expectanda uxoris seminatio, quae vocatur ; immo, saepissime expectari nequit, is differatur. Praeterea, non paucae uxores nullum orgasmum experiuntur ; multae, nonnisi post longum tempus. Praestat tamen, ut medici dicunt, conjugatos simul orgasmum experiri, nam tunc melius quiescit uxor, nec relinquetur in statu nervoso et minime satiativo, id quod in multis sanitati, nervis, somno nocet. Quod a quibusdam dicitur, *scii.*, conceptionem facilius evenire in mutuo simultaneo orgasmo, forte verum est, nam certum est quasdam secretiones in vagina nocivas esse spermatozois, dum e contra, secretiones in collo uteri sunt spermatozois proficuae et utiles. In orgasmo uxoris facilius in uterum ascendere possunt spermatozoa.

2. Nullum peccatum est si uxor inter congressum orgasmum suum cohibet, nam nil inde fit contra naturam. At vero absurdum est conari conceptionem evitari per orgasmi cohibitionem ; ex conscientia erronea uxor tali conatu, etsi vano, peccabit. Per uxoris orgasmum mariti ejaculatio fit facilior et forte jucundior, unde peccare potest uxor orgasmum suum cohibendo, certo contra caritatem ; num etiam contra justitiam, dubitatur. Sed uxor quae semper consulto frigidam et quasi passivam se tenet, prorsus monenda est hanc praxim deponere, nam marito suo jus suum non plene reddit.

3. Non licet semen virile deponere ad os vaginæ, et multo minus ad os pudendorum externorum, quando plenior penetratio sine gravi incommodo fieri potest, nam etsi conceptio tunc evenire possit, difficilius eveniet. Conjuges qui ita conceptionem evitari conantur certo peccant ex intentione prava. Si, e contra, aliqua sed non plena penetratio vaginæ fit, dum plenior haberi potest, secluso

illo pravo affectu, peccant conjuges inordinate matrimonio utendo. At utrum graviter an leviter, disputatur. Certum est conjugibus non licere ut copula dimidiata quae vocatur (ut supra) quando plenior penetratio facile possibilis est, nec licet confessariis illum modum suggerere ne proles numerosior nascatur nec ad peccata mortalia praecavenda.<sup>1</sup> Verum illa dimidiata copula non est intrinsece mala, uti blasphemia, suicidium et directa innocens occisio, nam quandoque licita est. Porro, licita evadit in casibus sequendibus, scilicet, ubi perfecta vaginæ penetratio est impossibilis, vel nimium dolorem causai, vel ubi ita vaginismo laborat uxor ut plenum contactum mariti pati non possit.

Quod a quibusdam dicitur, *scii.*, confessarium licite posse suadere onanistae, qui a nefaria sua praxi detertere non potest, dimidiatam copulam exercere potiusquam in sua praxi perseverare, id videtur haud approbandum et publici scandali ansam facile dabit.<sup>2</sup>

4. Quum omnis positivus actus quo conceptio impediatur grave peccatum sit, graviter peccat uxor in vaginam introducendo media quæ vim semen enecandi habent vel semen impediunt ne ascendat in uterum. Hujusmodi media sunt lotiones, spongiæ, pulvis, objecta chemica, instrumentum (pessarium occlusivum) in dies magis usitatum quod penitus occludit os uteri, vel substantiae chemicae quae os uteri astringunt. A pari, graviter peccat maritus qui instrumento quodam seu integumento utitur intra quod, inter copulam, semen effundit, ut postea et semen et integumentum ex vagina retrahat.

5. E contra, non peccant conjuges qui id quod possunt faciunt, etsi ob aliquem functionis defectum semen per accidens (non consulto) extra vaginam effundatur, dummodo sit aliqua spes intra vaginam id infundendi, nam jus ad copulam in tali casu haud exstinguitur.

6. Si maritus aut uxor inter copulam sese retrahat ante viri seminationem, sine justa imminente causa, cum periculo proximo seminis effusionis extra vaginam, graviter peccatur.

<sup>1</sup> cf. S.O., Nov. 23, 1922, responsio data Epp. Hollandiæ.

«cf. de Smct, *Ephm. Theol. Lovan.*, Oct. 1924, p. 564.



Quoad interruptionem copulae dari potest justa causa. Nam si ex mutuo consensu uterque aut alteruter sese retrahit ante seminationem et sine periculo proximo effusionis seminis virilis extra vaginam, non graviter peccant si in neutro est periculum proximum pollutionis, nam talis tactus impudicus non est graviter illicitus inter conjuges, et si fiat ex justa causa nullum est peccatum cum eadem limitatione. Hic tactus inter conjuges ubi neuter seminat vocatur coitus reservatus. Dicitur hic coitus esse licitus ad sedandam concupiscentiam, sed in multis casibus eam potius auget. At vero, si ex experientia constat conjuges posse ita coire, *scii.*, sine seminatione, talis coitus non est per se, graviter illicitus, nam in illo modo agendi nil fit contra naturam. Attamen S.O. in Monito, Jun. 30, 1952, graviter monet scriptores qui hanc praxim describunt, laudant, et suadent ut ab huiusmodi modo agendi desistant, sacerdotes vero ne loquantur quasi contra eam nihil esset objiciendum.<sup>1</sup>

7. Licite abrumpitur actus conjugalis ob causam gravem, v.g., magni doloris, scandali, praesertim puerorum, periculi morbi imminientis, et ut patet mortis. Periculum conceptionis futurae non est causa sufficiens.

8. Quum post copulam naturalem vaginae latera intus sibi invicem adhaereant—secluso morbo, quando semen receptum defluit, de quo casu non nunc est quaestio—nil facit uxor surgendo et mingendo, etsi ex erronea conscientia graviter peccaret intendendo ita conceptionem impedire. At expulsio seminis jam recepti ab uxore graviter illicita est, sicut et ejusdem enecatio. Inhonestum est copulae delectatione frui at sequelas impedire ob periculum partus difficilis vel abortus. Uxor non aequiparatur mulieri per vim oppressae, quae sine dubio potest statim post copulam licite expellere semen tanquam aggressorem injustum. Ex quo tamen conceptio locum habet, ne tali virgini quidem conceptionis fructum occidere licet.

9. Uxori non licet statim post copulam lotiones vaginales adhibere. Post quantum tempus id sit licitum, sanitatis causa, non facile patet. Magnopere discrepant auctores.

<sup>1</sup> A.A.S., XLIV, p. 546.



Quum vero ascensus seminis in uterum et tubas fallopianas valde lento fiat, dicendum videtur tres horas et forte sex intercedere debere inter copulam et lotionem ne spermatozoa in vagina enecentur. Satis absurde dicitur uxorem posse licite lotionem adhibere ad enecandum germen syphiliticum quod simul cum viri semine, utique syphilitici, vaginam intrat, nam medicamentum quod germen syphiliticum enecat semen etiam enecat, et semen prius enecatur quoniam est germinis syphilitici vehiculum.

io. Quoniam copula conjugalis est honesta, omnes actus prævii, qui copulam statim habendam adjuvant, liciti sunt. Hinc ante copulam conjugibus licet motus sexuales excitare, at cavendum est ne tales actus provocent periculum proximum pollutionis in alterutra persona. Si tamen per accidens et raro et præter intentionem sequatur pollutio, nullum esset peccatum. Hinc conjuges doceantur, maxima tamen cum prudentia et modestia, si necesse visum fuerit, secus tacendum, hosce actus prævios cum limitatione supradicta non esse peccaminosos.

n. Quum uxori liceat ex copula plenum orgasmum experiri, illi licet post ejaculationem mariti et ejus recessum, statim tactibus vel alio quovis modo plenam voluptatem sibi procurare, non vero sat longum tempus post, nam nulla esset tunc ad copulam vera relatio. Dicunt physiologi maritum in ipsa copula generarim suam reactionem brevi et facile experiri, uxorem vero, in genere, nonnisi post aliquod tempus. Probabiliter etiam statim ante copulam uxori licet orgasmum suum procurare si ex experientia constat se intra vel post copulam eum perficere non posse. Quodsi vir sese retrahat et seminet extra vas, deliberate et fere semper, quibusdam auctoribus videtur admittendum uxori licere non tantum intra copulam sese excitare ad suum orgasmum, quod certum est, sed etiam statim post copulam a viro onanistico peractam, nam ut aiunt ab ipso actus initio jus habebat uxor ad plenam voluptatem, et istud jus retinet non obstante mariti culpa. Haec doctrina tamen nobis non videtur ex principiis probanda.<sup>1</sup>

12. Non licet marito sese polluere si uxor se retraxerit

<sup>1</sup> Verm., *de Casi.*, n. 267.

ante viri seminationem, nam ejus actio non esset copulæ complementum, nam quantum ad virum attinet, tota copula conjugalıs perficitur et finitur in seminis intra vas ejaculatione, et hoc est opus naturæ, dum e contra plurimæ uxores in ipsa copula propriam plenam seminationem non habent, at illam habere possunt post copulam, atque semine virili jamjam in vagina incluso, adhuc suum opus potest facere natura, *scii.*, admiscendo utramque seminationem et ascensum seminis in uterum faciliorem reddendo.

## SECTIO 2. De Circumstantiis Actus Conjugalıs

1. Ut quilibet actus humanus sit honestus, adsit necesse est finis naturæ consentaneus. Jamvero finis propter quem actus conjugalıs exerceri potest est multiplex, *scii.*, prolis generatio, concupiscentiæ sedatio, juris comparti concessio, amor mutuus, corporis sanitas. Isti fines sunt moraliter boni. Immo, certum est actum conjugalem esse licitum ad evitandum propriam incontinentiam.<sup>1</sup>

2. Peccat graviter conjux sibi fingendo inter copulam adulterium psychicum. Dicunt tamen auctores illi licere fingere alterius cujusvis pulchritudinem ut facilius actus conjugalıs exerceatur. Praxis est periculosa et prorsus dissuadenda, nam facilis erit lapsus in pravum affectum.

3. Actum conjugalem exercere ob solam voluptatem excludendo quemlibet alium naturalem finem honestum est veniale peccatum ; at inordinatio non est gravis. Hinc damnata est contraria propositio a Pp. Innocentio XI.<sup>2</sup> Sed quum finis proprius actus vix unquam excludatur, et vix excludi possit, conjuges raro peccabunt actum conjugalem ob voluptatem exercendo. Conjuges non tenentur intendere generationem in actu conjugali, immo illis licet inefficaciter optare ne generatio sequatur, et in omnium consensu illis licet coire tempore minus apto ad conceptionem. Sed quoad usum habitualetn temporis infertilis perpendenda sunt verba Pii XII citata in Appendice III, p.413.

Quum tam varia sint temperamenta mulierum non potest

<sup>1</sup> i Cor. 7,2,5 ; cf. S. Th., *Suppi.*, q. 49, a. 5, ad 2, ubi videtur dicere actum talem esse veniale peccatum, at contra, S. Th., in *Epist. ad Cor.*, *l.c.*

<sup>2</sup> Propositio damnata est : ‘ Opus conjugii ob solam voluptatem exercitum omni penitus caret culpa ac defectu veniali.’



pro certo et pro omnibus determinari tempus intermedium inter duas successivas menstruationes quando conceptio non est probabilis, si excipiamus paucos dies immediate ante menstruationem. Una vero generalis regula dari non potest. Confessarius ergo melius tacebit quando interrogatus est de tempore iniertili, saltem non edicet pro certo id quod non est certum. At vero, nuperrime quidam medici, Knaus et Ogino, docent tempus sterile esse intra dies undecim immediate ante menstruationem.

Unde physiologica infertilitas adest in singulis undecim diebus ante menstruationem. Medicus R. de Guchteneere assignat pro tempore infertili dies sex vel septem immediate ante inceptam menstruationem. Addendum tamen videtur quod non confessarii est, sed medici tantum, assignare in casu concreto tempus quod juxta placita medicorum minus aptum dicitur (cum quanam incertitudine ipsi viderint) ad conceptionem. Praeterea, de tota hac materia, quae valde incerta est confessarius tacebit, nam ad minus scandalosum videbitur si a confessario matrimonia infertilia suggerantur.

4. Aptior modus actus conjugalis habetur si uxor sit supina, at alius situs, dummodo excludatur grave periculum semen virile extra vas fundendi, non excedit veniale peccatum. Anxiis pœnitentibus dicat confessarius : Naturali modo agas ; si id fieri nequit, nil facere licet quo conceptio impeditur.

5. Sub gravi tenentur conjuges in loco secreto actum conjugalem exercere, ne aliis scandalum, i.e., peccandi occasionem dent. Maxime dolendum est conjuges atque liberos, in pauperum tuguriis, in eodem lecto dormire cogi. Præstat grandiores filios filiasque humi extra parentum lectum dormire.

6. Nulla est lex positiva quæ usum matrimonii temporibus sacris prohibeat. Utique ab illius usu abstinere consilii esse potest nocte ante sacram communionem suscipiendam vel tempore pœnitentiæ agenda, at prorsus cavendum est ne doceantur conjuges actum conjugalem esse turpem vel peccaminosum ; immo, Sacramenta vitam maritalem et ipsum usum matrimonii sanctificare debent.

Inter menstruationis dies a copula abstinetur ob feminæ



pudorem et infirmitatem, at non ilhcita est si fieri potest mutuo consensu et sine gravi nocumento. Tempore praegnationis actus conjugal<sup>is</sup> per se est licitus, at exinde abortus periculum in primis et ultimis praegnationis mensibus oritur si copula sit repetita vel fortiter et arduo facta, et ideo tunc per accidens illicitus evadit. Item, lactationis tempore a copula abstinetur per vel sex hebdomadas ob infirmitatem uxoris et quia organa muliebria inflammata et sensitiva manent, et damnum haud leve provenire solet si fiat congressus intra duas a partu hebdomadas. Ergo abstinendum est sub gravi vel sub levi juxta mensuram damni quod subsequetur. Post purgationem et tempore lactationis actus conjugal<sup>is</sup> est licitus, sed secl<sup>uso</sup> gravi periculo incontinentiae conceptiones repetitae et sibi invicem fere statim successivae evitandae sunt uxoris sanitatis recuperandae causa. Paucae uxores hodie, in oppidis, conceptionis capaces inveniuntur plus semel singulis binis annis, quod est tempus quodammodo physiologicum in conjugibus juvenibus, pedetentim tamen spatia inter successivos partus protrahuntur. Quodsi jura maritalia conjuges temperate exercerent et vitam prout debent agerent, nil timendum, nisi in raro casu, plures conceptum iri filios quam quinque vel sex, ut dicunt medici. Tanta familia, vel edam major, si illam maritus alere poterit, et societati et parentibus et ipsis filiis maxime proficua est.

Tempore morbi conjugis actus conjugal<sup>is</sup> illicitus est prout damnum afferre valet. Si morbus est syphiliticus vel alias venereus, comparti sanæ actus conjugal<sup>is</sup> est maxime periculosus, et sub gravi abstinendum est nisi in periculo gravi incontinentiae et comparte monita, vel cum mutuo consensu. Si vero morbus sit pulmonaris, usus modicus matrimonii damnum grave non affert. Si morbus est cardiacus, testibus medicis, copula est periculosa et ab illa abstinendum est nisi in periculo gravi incontinentiae. At periculum incontinentiae a marito morigerato vinci potest et debet.

7. Si partus uxori mortem probabiliter—nam nemo dicere potest quod certo—allaturus est, ipsa uxor non cogenda est ordinarie sub gravi peccato a copula abstinere,

neque abortus neque prolis mors in utero sunt causæ cur a copula abstinendum sit.

### SECTIO 3. De Actibus Conjuguai citra Congressum Maritalem

#### 1. De actu completas delectationis vengrcæ.

(α) Grave peccatum est omnis actio quæ in se et ex natura sua naturali usui matrimonii adversatur, ut sunt pollutio sive in viro sive in uxore, et sodomia. Hic non additur onanismus, qui, prout stricte intellegitur, pollutionem connotât, et quum hæc sit illicita ita et onanismus illicitus est. Neque dicendum, ut aliqui putant, conjuges peccare ita matrimonio abutendo tantum quia conceptionem impediunt, nam etsi verissimum sit ita eos graviter peccare, tamen actum ipsum inspicere debemus potiusquam actus effectum, et actus est peccaminosus in sterilibus aequè ac in prolificis. Dictum est supra matrimonii abusus esse semper contra rectam rationem, et quidem graviter, ut videre licet ex sequelis quæ in genere sequerentur, etsi in quibusdam casibus nullum speciei humane nocumentum evasurum esset. Aliis verbis, moralitas actus judicanda est ex iis quæ per se ex ordinariè contingentibus sequeremur, non ex iis quæ per accidens non sequerentur. Idem argumentum allatum est ab omnibus ad probandum fornicationis scelus, *scii.*, ex fornicatione sequeretur generis ruina, etsi in uno alterove casu proles optime educari posset.

(b) Hinc voluntaria pollutio est conjugibus graviter illicita sive in marito sive in uxore, quod manifestum est, nam in utroque completa delectatio venerea cum effusione sive seminis virilis sive fluxus vaginalis est contra rectam rationem, contra bonum speciei, contra naturalem usum matrimonii, nec casus variatur eo quod femina est sterilis aut excisa. Aliis verbis, debemus considerare cur natura indiderit feminis istam functionem. Illam indidit ut femina posset actum sexualem rite, facile, et delectabiliter exercere.

#### 2. De conjugum impudiciæ actibus.

Omnes impudiciæ actus mutui inter conjuges liciti sunt si necessarii aut utiles ad copulam statim habendam.

Actus impudiciæ mutui, non ordinati ad copulam, quia



conjuges vel nolunt vel non possunt copulam exercere, liciti sunt ob justam causam, dummodo non intendatur pollutio nec influant actus proxime in pollutionem. Sufficiens ratio est mutuus amor fovendus. Si vero illi actus mutui graviter influant in pollutionem, tunc, pollutione imminente, debent conjuges ab istis actibus desistere. Quamquam vero conjugibus actus imperfectos mutuos exercitibus non licet completam delectationem veneream admittere, non semper cos de hac re monere necesse est, quia aliqui conjuges ibi peccatum non deprehendunt. Doceantur tamen caste et prudenter.<sup>1</sup> Certo facilius permittuntur tales actus si, pollutione imminente, conjuges possint et velint copulam exercere. Actus impudicitiae non ordinati ad copulam quos alteruter conjux solitarie et sine ratione exercet, etsi adsit delectatio venerea incompleta, etiam directe voluntaria, probabiliter non sunt gravia peccata dummodo illi actus non proxime influant in pollutionem nec illa intendatur. Nam isti actus natura sua ad copulam remote disponunt. Attamen venialia peccata sunt nam aguntur sine ratione et sunt otiosi.

Quum multa conjugibus quæ non ceteris permittantur, delectatio morosa, desideria, et phantasiæ circa illa sunt licita, unde secluso periculo proximo pollutionis, conjugibus licet de licita copula habenda vel habita cogitare, gaudere, etsi oriatur exinde venerea delectatio incompleta. Sed, ut patet, cavere debent ne foveant desideria vel delectationes morosas circa objecta prava, et vetita, et illicita, nam in conjugibus ut in ceteris, talia objecta sunt peccata, levia vel gravia, juxta eorum mensuram inhonestatis respectivæ.

#### SECTIO 4. Obligatio Actus Conjugalis

Conjuges non tenentur per se debitum petere ; possunt teneri per accidens, si compars sit in periculo incontinentiæ, vel si sit necesse ad fovendum amorem vel avertendas inimicitias, rixas, dissidias, odia, suspensiones infidelitatis, vel si uxor debitum habere vult, at propter ruborem id petere non vult.

Conjuges tenentur per se graviter debitum reddere, si compars serio etiam tacite id petat, nam ad id per contractum necessario sese obligaverant. Attamen, debitum denegare

<sup>1</sup>cf. Lehm., II, n. 1067.



est leve peccatum si tantum raro negetur, vel differatur, excluso compartis periculo incomincentke, vel si compare non serio petat.

Quum debitum reddere serio petenti sit gravis obligatio, patet leve incommodum a reddendo non excusare. Unde leve sanitatis nocumentum, capitis dolor levis, defatigatio parva, uxores non excusant a reddendo maritis serio petentibus. Quodsi hoc officium a conjugibus cum caritate et alacritate impletum fuerit, minores essent dissidiæ et minor pacis domesticæ turbatio, nam res magna est ut in incontinentiæ periculo et animi demissione conjuges habeant occasionem facilem naturalis et honestæ beatitudinis. Quodsi e contra uxores sese morosas præbeant, timendum ne viri sui ad scorta confugiant, vel saltem ad felicitatem extra domicilium et filiis spretis consequendam

#### SECTIO 5. Varia Quædam de Debito

Conjux adulter non amittit jus petendi debitum, sed compars non tenetur id reddere. Conjux adulter amittit jus strictum exigendi debitum propter adulterium formale, non permissum nec postea condonatum, et etiam propter sodomiam cum alia persona et bestialitatem.

Pariter jus exigendi amittit amens vel perfecte ebrius, nec constat compartem unquam tali debitum reddere teneri. Aliqui auctores putant compartem ex caritate teneri etiam amenti et perfecte ebrio debitum reddere in illius periculo proximo incontinentiæ. Alii vero obligationem negant ob timorem ne proles aliquo modo, mente vel corpore, afflicta nascatur. Practice obligatio est dubia.<sup>1</sup>

2. Non licet reddere debitum petenti ut modo illicito fiat ; licet tamen id reddere si ex parte petentis illicite petatur at nil illicitum ratione ipsius actus aut circumstantiarum petatur.

3. Immoderata petitio est illicita. Petitio est immoderata si sanitati noceat. Post primos menses matrimonii contracti, temperate petitur si in satis robustis bis in hebdomada diversis noctibus petatur. At temperantia in

<sup>1</sup> Cappello, III, η. 81 1, 2.

vencreis est relativa, ideo cum mutuo consensu et sine periculo sanitatis, id quod ex experientia constabit, præsertim si subsequatur defatigatio aut debilitas, singulis fere noctibus coire non erit immoderatum. Usus tamen frequentior juris maritalis fastidium creat, et ut in similibus rebus ita in hac, temperantia potius adjuvat quam nocet.

4. Nulla est reddendi obligatio si inde oriatur grave periculum imminens, ut in contagione, vel futurum, ut in maxime periculoso partu. Valde notandum id quod ab omnibus auctoribus docetur, *scii.*, incommoda consueta, dolores consuetos uxorem non excusare a debito reddendo. Sed secluso periculo incontinentiae, nulla est obligatio debitum reddendi si plures filii ali non poterunt. Quodsi maritus prorsus negligat suos filios alere, jus petendi debitum amisit.

5. Si matrimonium fuerit invalidum, et id utrique parti cognitum, neutra pars licite petere aut reddere potest. Hic rerum status saepe etiam in Catholicis evenit post actum civilem tantum, quod non est validum matrimonium. Si vero, ut fit, uni parti tantum invaliditas noscitur, haec pars alteram monere tenetur. In maximo tamen discrimine, ut comminatione mortis aliussve mali gravissimi, haec pars passive se tenere potest, secluso periculo consensus in delectationem.

Si adest fundata suspicio de invaliditate matrimonii contracti, et utraque pars in dubio positivo versatur, a copula abstinendum durante inquisitione; si una tantum pars dubitat, haec tenetur debitum reddere comparti quae ceteroquin jus petendi non amisit. Post inquisitionem serio factam sed frustra, standum est pro valore matrimonii, usque dum invaliditas certo probata erit.

6. Si una pars ante matrimonium voto castitatis ligata est, juxta doctrinam hucusque communem haec petere non potest, debet tamen reddere; si tamen haec pars advertat alteram esse in periculo incontinentiae potest debitum petere. Si voto ligata illicite petat ob votum, altera pars reddere tenetur. Ubi vero adest periculum incontinentiae potest maritus uxoris votum irritare et uxor mariti votum indirecte irritare, etsi utraque pars mutuo consensu votum emisit. At vero, juxta sententiam Cardinalis Gasparri,



pars voto ligata, matrimonium ineundo, dispensationem a jure accipit (c. **mi**), sed limitatam quoad actus proprios conjugalis vitae. Mortuo conjugē, votum reviviscit. Tamen talis sententia nondum alios patronos invenit, ideoque hic, cum sententia communi, debita cum reverentia, rejicitur.

7. Post matrimonium valide initum, si supervenerit vera impotentia ex parte viri, ut si utroque testiculo orbatus vel si vasectomiam passus est, licet copulam meliore modo quo possunt exercere.<sup>1</sup> Idem dicendum si matrimonium valide initum fuerit cum impotentia temporaria et sanabili. Item illis licet actus imperfectos citra copulam exercere rationabili de causa et secluso periculo proximo pollutionis.

#### SECTIO 6. De Abusu Matrimonii

##### 1. Sodomia

Sodomia imperfecta inter conjuges grave peccatum est quia est abusus et innaturalis usus generativæ functionis, et adversatur fidei conjugali cui renuntiare conjuges non valent. At cooperatio materialis uxoris cum marito sodomitico etsi per se illicita per accidens licita esset, si secus pateretur gravissimum damnum et si cohibeat delectationem forte ortam. At non est grave peccatum, secluso affectu sodomias, inchoare copulam isto modo inconsueto cum seria intentione eam rite consummandi in vase debito.i.

##### 2. De Onanismo

i. Theologi vocem onanismi usurpare solent pro frustrata copula sexuali, vocem vero masturbationis pro excitatione sexuali, sive incompleta sive completa extra copulam per tactus procurata.

Onanismus proprie loquendo in eo consistit quod ita peragitur copula ut, effuso semine virili, effectus seminis, quod ad generationem spectat vel per se et ut in pluribus spectare posset, sequi non potest. Ita multi auctores, at melius definitur ut copula naturalis, frustrato naturali fini

<sup>1</sup> The following hold this view : Lehm. II, 1064; Cappello, III, 814; Toletus, *Instruct. Sacer*, VII, c. 16, n. 2; Sanchez, *de Matrim. VII*, d. 102, n. 7; Reuter, tr. VIII, pt. iv, n. 559 ; Lacroix, VI, pt. iii, n. 319 ; Ball.-Pal. n. 1269 ; D'Annibale, 470, n. 13; Génicot, II, 543; Schmalzgrueber, tom. IV, tit. 15, n. 32 ; Wouters, *de Ilrl. Cast.* n. 92, II.



operis ipsius copulæ. Notandum est onanismum posse vcriiicari etiam in sterilibus, et ideo ejus exactam notionem nullum respectum habere ad actualement vel possibilem generationem vel conceptionem.

2. Vir est onanismi reus quando, copula debite incepta, sese retrahit ante seminationem et extra vas debitum semen effundit, vel quando copulam exercet non quidem nudo membro virili sed illo tecto aliquo integumento intra quod, in ipso coitu, semen in illud infunditur ibique manet.

3. Mulier est onanismi rea, quod ad peccatum et effectum attinet, quando utitur instrumento quo præcludatur depositio seminis virilis in nudam vaginam vel ingressus seminis in uterum, vel mediis chemicis, sive substantia solida quæ calore liquescit sive lotionibus cum intentione semen virile ejiciendi vel enecandi.

4. Onanismus est grave peccatum, immo enumeratur inter gravissima peccata ; ne tamen dicatur esse homicidium æquivalens vel anticipatum, nisi in largo sensu. Est peccatum quia est abusus actus naturalis, adversatur fini matrimonii, est contra fidem conjugalem, cui valedicere conjuges non possunt, mortis pœna dignus fuit in Vetere Testamento (Gen. 38, 10). Etiam vergit in destructionem generis humani et ab Ecclesia declaratur esse contra legem naturalem<sup>1</sup> et ab omnibus doctoribus Catholicis, juxta continuam traditionem, ut grave condemnatur. Præscindendo et ab auctoritate, quæ non admittitur ab acatholicis, et ab exegesi loci in fibro Geneseos, videtur dicendum illud peccatum esse contra naturam sicut mendacium, nam est abusus functionis naturalis quæ nullum alium finem habere concipi potest, quam ut sit actus sexualis communis et socialis inter virum et feminam ad finem determinatum, scilicet, ad vitam propagandam. Præterea convincitur esse grave peccatum quia vel unicus actus onanismi est perversio functionis generativæ in re maximi momenti.

5. Quum hodie magis quam antea hoc peccatum in populi moribus serpserit, confessarii maxima cum prudentia agant, ne ex una parte id statim sub peccato prohibeant

<sup>1</sup> S.O., May 21, 1851, April 6, 1853, et Litt. *Encycl. Casti Connubii*, Pp. Pii XI.

quod non est peccatum, neve ex alia parte, ob humanum respectum aut misericordiam, agendi modo conniveant qui est graviter peccaminosus.<sup>1</sup> In primis ergo exacte, caste tamen, a conjugibus exquirendum est quid in hac parte agant, si quando anxii quærant, aut ita rem subobscuris verbis narrent ut confessarius eam non clare percipiat. Principia ergo hic caute et exacte exponi debent quod ad cooperationem in onanismo spectat. Ideo dicenda videntur, quæ sequuntur, juxta auctores modernos et sententiam communem, nam in hac materia valde exacte loqui debet confessarius ne minimam ansam onanismo præbeat. Nam, nisi fideles instruantur, non dubitandum quin onanismus ut ignis flagrans mores aliquorum Catholicorum mox destructurus sit.

## SECTIO 7. De Cooperatione in Onanismo

1. Ut patet, omnis cooperatio formalis in peccato alterius est peccatum. In onanismo, cooperatio formalis adesset si in actum peccaminosum daretur consensus, vel si de peccato foveretur gaudium. Insuper, si una pars alteram induxit ad peccandum, sive explicite sive implicite, v.g., conquerendo de prole numerosa, ea pars, utpote causa moralis peccati, peccat. Circa illud principium nullum potest esse dubium inter Catholicos.

2. Principia vero de materiali cooperatione non sunt tam perspicua omnibus. Haec ergo dicenda sunt :

(a) De cooperatione materiali uxoris cum viro onanista haec dicenda videntur :

Si vir mere se retrahit et seminat extra vas, uxor ex causa rationabili mediocriter gravi at non gravissima licite potest et petere et reddere debitum, nam id quod petit et reddit est in se licitum, *scii.*, copula naturalis. Tenetur tamen ex caritate erga maritum eum deterrire a tanto peccato, sed prudenter eum monendo. Ergo quandoque potest eum relinquere in bona fide, monere eum semel et iterum, at non tenetur sub valde gravi incommodo eum monere singulis

<sup>1</sup> Pp. Pius XI, Litt. Encycl. *Casti comubii*<sup>9</sup> severe monet confessarios ne officium suum in hac materia negligant.



vicibus ; potest sub proprio gravi incommodo quandoque monitionem omittere. Causae sufficientes cooperationis materialis censentur esse timor bene fundatus rixarum, vel ne maritus ad scorta recurrat, vel periculum proximum incontinentiae. Inter ipsam copulam, uxori licet plenam voluptatem captare. Licet se antea parare ad actum, sed utrum liceat illi post recessum viri plenam voluptatem procurare merito dubitatur, nam quando seminatio viri fit extra vas, uxoris voluptas venerea completa nullam relationem habere potest ad talem actum. Insuper, ut patet, uxori licet gaudere de sua liberatione a conceptione, parturitione et prole numerosiore, sed juxta omnes, tale gaudium est periculosum quum facile transeat in desiderium inhonestum.

Quando maritus rem cum uxore peragit, suo membro in involucri inclusio, vel falsa vagina in vas uxoris introducta, uxori non licet cooperari materialiter in ullo actu suo positivo cum marito, nam talis agendi modus est ab initio prorsus illicitus. Sub metu gravissimi mali licet uxori passive se habere, quasi esset mulier stuprata si vis inutilis, sed tenetur omnem consensum in delectationem cohibere, nec licet post recessum viri delectationem captare aut procurare.<sup>1</sup>

Quod supra dictum est de passivo statu uxoris videri potest contra responsum S. Poenit., Apr. 3, 1916. Ita responsa refert Vermeersch :

(i) Utrum mulier, casu quo vir ad onanismum excercendum uti velit instrumento, ad positivam resistentiam teneatur ? *Resp.* Affirmative.

(ii) Utrum vir talibus utens instrumentis oppressori vere æquiparari debeat : cui proin mulier eam resistentiam opponere debeat quam virgo invasori ? *Resp.* Affirmative.

De istis responsis ita scribit Cappello, III, η. 817 : “At si metus exstet gravissimi mali, v.g., mortis vel gravium vulnerum, uxor, quæ passive se habeat, et omnem consensum

<sup>1</sup> cf. Varia responsa Congregationum Romanarum circa onanismum. S. Poenit., Maii 27, 1847; S.C. Inquisitionis, Maii 21, 1851 ; S. Poenit., Junii 8, 1842 ; S. Poenit., Feb. 1, 1823 ; S. Poenit., Nov. 13, 1901 ; S. Poenit., Apr. 3, 1916, quæ inveniuntur apud Ferrerics, *Theol. Mor.*, II, n. 1160, et Vermeersch, *de Castitate*, n. 263.



in delectationem excludat, peccatum non committit ; quia tunc proprie solum tolerat seu patitur matrimonii abusum, non permittit.”

(b) De cooperatione mariti cum uxore quae actu matrimonii abutitur.

Si copula ab initio naturaliter peracta sit at post viri recessum uxor lotiones adhibet sive ad eluenda spermata ex vagina sive ad ea enecanda, marito licet copulam exercere. Debet tamen prohibere uxorem ne ita agat.

Si vero ante copulam uxor adhibet media quibus vel os uteri clauditur vel ascensus seminis in uterum impeditur, ut, v.g., si uxor spongiam intra vas introducat, juxta communem sententiam marito non licet copulam exercere. Hæc sententia videtur vera etsi aliqui contrarium dicant.<sup>1</sup> Ratio est quod talis copula non est naturalis, nam natura abhorret a copula in qua vir seminat contra aliquod obstaculum artificiosum, etsi intra vaginam positum.

#### Notæ Pastorales

Multi libri hodie praxim defendunt quae nata est conceptiones impedire. Quum tales libri ex professo tueantur id quod est contra bonos mores et jus naturae, eo ipso ab Ecclesia prohibentur et ideo e manibus omnium praesertim juvenum tolli debent.

Dictum est supra nullum tempus assignari posse quasi pro certo minus aptum ad fecundationem. Si tamen cui conjugii visum sit tale tempus dari, non peccat matrimonio utendo illo tempore pro justa causa, nam nil facit quod generationem impediat.<sup>2</sup> Id confirmatur responso S. Pcenit., Jun. i, 1880. Supervacaneum est de hoc tempore disputare, nam ne medici quidem inter se congruunt in re in qua nondum adsunt indicia et probationes quae rem evincant.

<sup>1</sup> Pro contraria sententia conferatur Merkelbach, *de Cast, et Lux.*, p. 95.

<sup>2</sup> Adversarii fidei Catholicae absurde dicunt nullum esse discrimen inter actus anticonceptionales ubi adhibetur instrumentum, et electionem temporis minus apti—si quod detur—ad conceptionem. Toto cœlo in re et in genere morum actiones differunt, nam in illo casu conceptionis impedimentum positivum ponitur, in hoc casu, nullum ponitur. Tempus minus aptum certo est tempus praegnationis. At tunc coire ab omnibus—salva sanitate uxoris et fetus—admittitur.

Non licet confessario silere quando suspicionem rationabilem habet aliquem pœnitentem onanismo addictum esse etiam in bona fide nec sese de illo peccato accusat. Interrogatio tamen fiat in genere et modeste, v.g., “ Num quid te angit circa officia tua ? ” Quodsi confessarius deprehenderit pœnitentem hac in materia peccare, saltem materialiter, per se tenetur gravem monitionem dare et tunc absolutionem dare si pœnitens sit dispositus et confessario obedire et proponere tale facinus deponere. Si vero prævideatur monitio non esse profutura, juxta principia ab omnibus admissa, omitti potest ad tempus monitio. Multo facilius est hanc monitionem omittere in casu uxoris quæ cooperatur in hoc peccato quam mariti qui inventus est esse putidus onanista.

Valde brevis sit interrogatio, si necessaria, de debito conjugali, et fiat tantum terminis generalibus. Nunquam decet confessarium uxorem juvenem vel sponsam instruere de debito ; si de eo quaesiverit puella, remittatur ad matrem vel matronam piam vel honestam amicam. Quod si vere dubitet uxor num sibi liceat quod a marito petatur, et multo magis si sponsa nupturiens petat, breviter dicat confessarius nil licere quod positive impediat effectum actus conjugalis, ibique rem relinquat, nec feminas de rebus conjugii loquaces patiatur. Ratione integritatis melius est ut in pluribus confessarius deficiat quam ut in uno abundet.



## APPENDIX

### Monita Pp. Pii XI de Recto Usu Matrimonii

Circa cooperationem uxoris cum marito onanistico verba quæ sequuntur deprompta ex Encycl. Pp. Pii XI, *Casti Connubii* doctrinam a theologis tenendam clare proponunt :

“ Optime etiam novit Sancta Ecclesia non raro alterum ex conjugibus pati potius quam patrari peccatum, cum ob gravem omnino causam perversionem recti ordinis permittit, quam ipse non vult, eumque ideo sine culpa esse, modo etiam tunc caritatis legem meminerit et alterum a peccato arcere et remove ne negligat. Neque contra naturæ ordinem agere ii dicendi sunt conjuges, qui jure suo recta et naturali ratione utuntur etsi ob naturales sive temporis sive quorumdem defectuum causas nova inde vita oriri non possit. Habentur enim tam in ipso matrimonio quam in conjugalis juris usu etiam secundarii fines, ut sunt mutuuum adjutorium mutuusque fovendus amor et concupiscentiæ sedatio, quos intendere conjuges minime vetantur, dummodo salva semper sit intrinseca illius actus natura ideoque ejus ad primarium finem debita ordinatio.”

Certum videtur Papam in priore parte citationis loqui de licita cooperatione uxoris, gravi de causa et post monitiones datas, in ea specie onanismi quæ perficitur mera retractione viri, et de nulla alia specie, v.g., de illa specie ubi vir adhibet involucrum. Hoc eo magis clarum est quod omnes auctores omnium scholarum hanc ultimam speciem cooperationis uno ore condemnabant. Non supponendus est Summus Pontifex aliam doctrinam docere voluisse. Præterea, in altera parte citationis, Papa locutus de intrinseca natura actus conjugalis. Profecto, in onanismo condomistico intrinseca natura actus prorsus pervertitur.

## TREATISE XIX THE CLERICAL STATE

### CHAPTER I

#### CLERICS IN GENERAL (cc. 108-117)

Those are clerics who are set apart for the sacred ministry in the Church at least by the first tonsure.

The Hierarchy of the Church is twofold, the one of Orders, that is, the power of exercising the sacred functions, chiefly of offering Sacrifice and of administering the Sacraments, the other of jurisdiction, that is, the power of ruling the faithful, in which the power of teaching is included. By divine institution, the Sacred Hierarchy of Orders consists of bishops, priests and other sacred ministers, that is, at least deacons ; the hierarchy of jurisdiction resides in the Supreme Pontificate and the subordinate episcopate. By ecclesiastical institution other degrees have been added.

Every cleric must be affiliated to some diocese or some Religious Institute ; unattached clerics (*vagi*) are not tolerated. The bond of affiliation to a diocese is called incardination. Excardination is canonical transfer from one diocese to another. This is effected by formal letters, by reception of a residential benefice in another diocese, or by religious profession with perpetual vows (c. 585).



## CHAPTER II

### VOCATION TO THE CLERICAL STATE

#### SECTION 1. Necessity of Vocation

A special vocation to the clerical state is necessary. This vocation is the external admission by legitimate authority of one who offers himself for the clerical life. The legitimate authority is the bishop. No one can claim this external vocation : “ Neither doth any man take the honour to himself, but he that is called by God, as Aaron was” (Heb. 5, 4) : “ Take unto thee also Aaron thy brother with his sons, from among the children of Israel, that they may minister to Me in the priest’s office ” (Exod. 28,1).

#### SECTION 2. Initial and Internal Vocation

An internal vocation to the clerical state is always presupposed. The canons (cc. 1353, 1357) assume signs of a vocation in boys, and the bishop is exhorted to inquire into the vocation of candidates in the seminaries. This internal vocation again presupposes fitness for the life. Consequently, Divine Providence prepares future ministers for God’s Church, by the bestowal on some select souls of certain qualities of character and certain special graces to fit them to embrace this state of life. That this is so is abundantly clear from the mind of the Church expressed in the canons (c. 1353). It bids the parish priest take special care to shelter those boys from the contagion of the world who give evidence of an ecclesiastical vocation, to school them to piety, to lay the foundations of their literary training, and to foster in their souls the seed of the divine vocation. This expectation of the Church should be seriously taken to heart by all confessors and all parish priests, so that where an initial vocation may be suspected to exist, they should on all accounts cherish and foster it, and show their apostolic zeal for the salvation of the world by suggesting, always with reasonable moderation, to good, honourable, and unworldly boys, the

possibility that God may be calling them to a higher life than life in the world. The most fertile soil on which vocation to the priesthood grows is the good Catholic home. The good father and mother who know how to bring up their children in the Catholic Faith, who give a good example of regularity in approaching the Sacraments, who teach their children how to recite night and morning prayers and say them together, who do not give way from misplaced foolish sentimentality to their child's every whim, such parents are rewarded by God with a priest in the family, a wonderful and unsurpassed distinction. There is little hope that the boy who has had his own way, chosen his own companions, lived in luxurious surroundings, and tasted every, if only innocent, form of amusement, will be other than the rich young man in the gospel who, when invited by our Lord to the higher life, walked away sad because his heart was attached to his possessions (Mt. 19, 22).

This initial and internal vocation may be judged to exist from the interior movements of grace manifested by a desire based on a supernatural motive to enter the clerical state. No clear and positive inspiration need be expected nor any unusual impulse of the will. Wherefore, if a boy has the requisite mental and moral dispositions, and is not under any canonical impediment (which, if it existed, might be dispensed), and desires to enter the clerical state from a supernatural motive, such as zeal for souls or greater certainty of salvation, then there is no doubt about the initial and interior vocation that would justify him in offering himself to a bishop for admission to the clerical state.

That no clear interior impulse is necessary is now the universal teaching of divines, in view of the approval by Pope Pius X of the opinion of a special Commission of Cardinals who examined the work of Canon Lahitton, "*La Vocation Sacerdotale*." The view of the Cardinals, fully approved by Pope Pius X, was that the following teaching of the author of the book is deserving of praise : (1) that no one has a right to ordination antecedently to the free election of him by the bishop ; (2) that what is called vocation to the priesthood does not consist, at all events necessarily and as a



general rule, in some interior desire of the subject or in an impulse of the Holy Spirit to receive the priesthood ; (3) but, on the contrary, nothing more is required in the candidate that he may rightly be invited by the bishop, than a right intention together with a fitness based on those gifts of nature and grace, and confirmed by that goodness of life and sufficiency of learning, that afford a well-founded hope, that he would be able rightly to fulfil the priestly duties and maintain its obligations holily.

It is not in itself a sin to set aside a vocation to the priesthood, for it is a higher state of life than that required for salvation. A sin of sloth or self-ease or unreasonable ambition might be committed, but it would normally not be a grave sin.

The right intention that is the sign of an interior and initial vocation to the priesthood is praiseworthy and should be kept before the mind always and fostered. But to enter upon the clerical state for a purpose not entirely praiseworthy, all other conditions being substantially fulfilled, would not be a grave sin, for the obligations of the priesthood can be fulfilled even by one who is not entirely spiritual in his outlook. But the higher motive should always predominate.

### SECTION 3. Signs of Want of Vocation

One who is addicted to grievous carnal sin, and who has no good probable grounds for thinking that he will, as a rule, avoid grave sins against chastity, is not fit for the sacred ministry, and therefore may not seek ordination if he thinks it very likely that he would continue in the same state of sin after ordination. The expectation of the necessary graces is not sufficient ; there should certainly be a period of some months of trial. If the candidate cannot remain chaste, he has no vocation. Indeed, unless the sins are likely to be very rare, the candidate should be dissuaded from taking Orders.<sup>1</sup>

The confessor of such a candidate should not show himself gentle or lax in this matter, and may rely on the experience

<sup>1</sup> Verm., III, n. 32.



of other confessors, and the record of other times and places—for human proclivities do not change—in coming to the definite conclusion that severity in dealing with such candidates, even to the denial of absolution, is by no means misplaced. In those cases where the vicious habit, contracted before seminary days—and the conclusion would be still more true if contracted during that time—has not been overcome in the second year of theology, or at latest, in the third year, the candidate should be told by his confessor to retire from clerical life.<sup>1</sup> The most distressing case would be that of one who is on the eve of ordination and is in the toils of carnal sin. But principles must be adhered to even in his case. An extraordinary confessor who meets with such a penitent on the eve of the diaconate or the priesthood should advise him to retire from the life ; but in the opinion of Vermeersch he should not impose on him the obligation of retiring unless his grievous lapses take place every week or oftener, or unless the sins are openly scandalous. Solitary vice is, it is true, sometimes cured instantaneously ; usually it is not. It is obvious that even stricter views must be taken in cases of grievous sexual sins with others. The rarer cases of addiction to alcohol are to be similarly treated. There is little prospect that an intemperate priest will ever amend. In view of the serious view which divines take of this matter, the prudent confessor will not hesitate to take the severe, but perfectly just, view that scandal is to be avoided at all costs, and unfit candidates deterred from the sacred ministry. In a matter of such moment the holiness of the Church, and the edification of the sacred ministry, and the protection of the flock of Christ, are the supreme rules for action.

<sup>1</sup> Venn., III, n. 32, III, 4. In cases where a vicious (sexual) habit has not been overcome in the second year of theology', or at latest in the third, the candidate for Sacred Orders should be at least advised by his confessor to retire from clerical life. In the view of Vermeersch, the confessor, coming across such a case almost on the eve of ordination, need not oblige the candidate to retire from the clerical life unless his grievous lapses take place every week or oftener, or unless the sins are openly scandalous. Nevertheless, the said author (*Periodica*, 1928, p. 235) would insist on ordination being deferred in the case. We believe that this view should be adopted. Proof must be given that the habit has been overcome.

## THE CLERICAL STATE

### SECTION 4. Examination of Candidates

The Sacred Congregation of the Sacraments has issued an Instruction to local Ordinaries concerning the examination of candidates for the clerical state.<sup>1</sup> Not only has the Ordinary himself to investigate the fitness of the candidate, but the parish priest and others are instructed to answer certain questions about his character and conduct. It will be of interest to the student of these pages to see what the candidate for Sacred Orders is asked to sign. It is as follows :

“Ego subsignatus N. N., cum petitionem Episcopo exhibuerim pro recipiendo subdiaconatus (seu diaconatus vel presbyteratus) Ordine, sacra instante ordinatione, ac diligenter re perpensa coram Domino, juramento interposito, testificor inprimis, nulla me coactione seu vi, nec ullo impelli timore in recipiendo eodem sacro Ordine, sed ipsum sponte exoptare, ac plena liberaque voluntate eundem velle, cum experiar ac sentiam a Deo me esse revera vocatum.

“Fateor mihi plene esse cognita cuncta onera cæteraque ex eodem sacro Ordine dimanantia, quæ sponte suscipere volo ac propono, eaque toto meæ vitæ curriculo, Deo opitulante, diligentissime servare constituo. Praecipue quae celibatus lex importet clare me percipere ostendo, eamque libenter explere atque integre servare usque ad extremum, Deo adjutore, firmiter statuo. Denique sincera fide spondeo jugiter me fore, ad normam ss. Canonum, obtemperaturum obsequentissime iis omnibus, quae mei praecipient Praepositi, et Ecclesiae disciplina exiget, paratum virtutum exempla praebere sive opere sive sermone, adeo ut tanti officii susceptione remunerari a Deo merear.

“Sic spondeo, sic voveo, sic juro, sic me Deus adjuvet et haec Sancta Dei Evangelia, quæ manibus meis tango.”

[Loco] . . . die . . . mensis . . . anni.<sup>2</sup>

<sup>1</sup> cf. *supra*, vol. IV, p. 46. See alio p. 50 for a Summary of the Instruction of the Sacred Congregation of Religious.

<sup>2</sup> S.C.S., Dec. 27, 1930 ; cf. *supra*, p. 51, for the English version of the Declaration.



## APPENDIX

### Pope Pius XI on the Priesthood

The recent Encyclical Letter of His Holiness, Pope Pius XI, *Ad Catholici Sacerdotii*, treats with vigour and singular beauty of the subject of the Catholic Priesthood. It will be of interest to set out here some passages which deal with the testing of candidates for the priesthood, the weeding out of those not fit for priestly Orders, the positive qualities necessary in candidates for Orders, the fostering of vocations, the good influence of the Catholic home, spiritual exercises for priests, lastly, some words of His Holiness addressed to those who are engaged in immediate preparation for the priesthood.

#### 1. Candidates to be thoroughly tested

After praising the erection and management of seminaries for the education of future priests, His Holiness continues :

“ But it would be of little avail, were there any lack of care in the selecting and approving of candidates. In this selection and approval, all who are in charge of the clergy should have some part ; superiors, spiritual directors and confessors, each in the manner and within the limits proper to his office. They must indeed foster and strengthen vocations with sedulous care ; but with no less zeal they must discourage unsuitable candidates, and in good time send them away from a path not meant for them. Such are all youths who show a lack of necessary fitness, and who are, therefore, unlikely to persevere in the priestly ministry both worthily and becomingly. In these matters, hesitation and delay is a serious mistake and may do serious harm. It is far better to dismiss an unfit student in the early stages ; but if, for any reason, such dismissal has been delayed, the mistake should be corrected as soon as it is known. There should be no human considerations or false mercy. Such false mercy would be a real cruelty, not only towards the Church, to whom would be given an unfitted or unworthy



minister, but also towards the youth himself; for, thus embarked upon a false course, he would find himself exposed to the risk of becoming a stumbling block to himself and to others, with peril of eternal ruin.”

2.   The Unfit to be weeded out as early as possible

“ Whoever, urged on perhaps by ill-advised parents, looks to this state as a means to temporal and earthly gains which he imagines and desires in the priesthood, as happened more often in the past ; whoever is intractable, unruly, or undisciplined, has small taste for piety, is not industrious, and shows little zeal for souls ; whoever has a special tendency to sensuality, and after long trial has not proved that he can conquer it ; whoever has no aptitude for study and who will be unable to follow the prescribed courses with satisfaction ; all such cases show that they are not intended for the priesthood. By letting them go on almost to the threshold of the sanctuary, superiors only make it ever more difficult for them to draw back ; and perhaps even cause them to accept ordination through human respect, without vocation and without the priestly spirit.

“ Let superiors of seminaries, together with the spiritual directors and confessors, reflect how weighty a responsibility they assume before God, before the Church, and before the youths themselves, if they do not take all means at their disposal to avoid a false step. . . . Should the superiors, for whatever reason, not take steps or show themselves weak, then especially should confessors and spiritual directors admonish the unsuited and unworthy, without any regard to human considerations, of their obligation to retire whilst yet there is time ; in this they should keep to the most secure opinion, which in this case is the one most in favour of the penitent, for it saves him from a step which could be for him eternally fatal. If sometimes they should not see so clearly that an obligation is to be imposed, let them at least use all the authority which springs from their office and the paternal affection they have for their spiritual sons, and so induce those who have not the necessary fitness to retire of their own free will.

### 3. Positive aptitudes necessary

“ The chief responsibility, however, rests with the bishop, who according to the severe law of the Church : ‘ Should not confer Holy Orders on anyone, unless from positive signs he is morally certain of canonical fitness ; otherwise he not only sins grievously, but also places himself in danger of sharing in the sins of others ’ (canon 973). This canon is a clear echo of the warning of the Apostle to Timothy : ‘ Impose not hands lightly on any man, neither be partaker of other men’s sins ’ (1 Tim. 5, 22). Our Predecessor, S. Leo the Great, expounds : ‘ is to confer the sacerdotal dignity on persons not sufficiently approved’, as ‘before maturity in age, before the test of obedience, before due examination, before experience in discipline ’ ; and ‘ to be a partaker of other men’s sins ’ is for the ordainer to become as unworthy as the unworthy man whom he ordains. For, as S. John Chrysostom says : ‘ You who have conferred the dignity upon him must take the responsibility of both his past and his future sins.’

“ These are severe words, Venerable Brethren, yet still more dreadful is the responsibility which they declare, a responsibility which justified the great bishop of Milan, S. Charles Borromeo, in saying : ‘ In this matter, my slightest neglect can involve me in very great sin.’ Listen to the warning of Chrysostom whom We have just quoted : ‘ Impose not hands after the first trial, nor after the second, nor yet the third, but only after frequent and careful observation and searching examination ’ ; a warning which applies in an especial way to the question of the uprightness of life in candidates to the priesthood. ‘ It is not enough,’ says the holy bishop and Doctor, S. Alphonsus de Liguori, ‘ that the bishop knew nothing evil of the ordinand, but he must have positive evidence of his uprightness.’

“ Hence, do not fear to seem harsh if, in virtue of your rights and fulfilling your duty, you require such positive proofs of worthiness before ordination ; or if you defer an ordination in case of doubt, because, as S. Gregory the Great eloquently teaches : ‘ Gut from the forest beams fit



for building, but do not place the weight of the building upon them at once. Delay many days until they are dried and made fit for the purpose ; because if this precaution be omitted, very soon they will break under the weight.' Or, to use the short but clear expression of the Angelic Doctor : ' Holiness must come before Holy Orders . . . hence the burden of Orders should be placed only on walls seasoned with sanctity, freed of the damp of sins.' ”

#### 4. Better few priests than indifferent ones

“ Bishops and Religious Superiors should not be deterred from this needful severity by fear of diminishing the number of priests for the diocese or Institute. The Angelic Doctor, 5. Thomas, long ago proposed this difficulty, and answers it with his usual lucidity and wisdom : ‘ God never abandons His Church, and so the number of priests will be always sufficient for the need of the faithful, provided the worthy are advanced and the unworthy sent away.’ The same Doctor and Saint, basing himself on the severe words used by the Fourth Ecumenical Council of the Lateran, observes to our purpose : ‘ Should it ever become impossible to maintain the present number, it is better to have a few good priests than a multitude of bad ones.’ ”

#### 5. The fostering of vocations

“ Yet although it remains unquestionably true that mere numbers should not be the chief concern of those engaged in the education of the clergy, yet at the same time, all should do their utmost to increase the ranks of strong and zealous workers in the vineyard of the Lord ; the more so, as the moral needs of society are growing greater instead of less. Of all the means to this noble end, the easiest and the most effective is prayer. This is, moreover, within the power of everyone. It should be assiduously used by all, as it was enjoined by Jesus Christ Himself : ‘ The harvest, indeed, is great but the labourers are few. Pray ye therefore the Lord of the harvest, that He send forth labourers into His harvest’ (Matthew 9, 37–38). What prayer could be more acceptable to the Sacred Heart of our Saviour?



What prayer is more Likely to be answered as promptly and as bounteously as this, which meets so nearly the burning desire of that Divine Heart ? ‘ Ask therefore, and it will be given unto you ’ (Matthew 7, 7). Ask for good and holy priests and our Lord will not refuse to send them to His Church, as He has ever done throughout the centuries. It has been in fact precisely in times which seemed least propitious, that the number of priestly vocations increased.”

## 6. The Catholic home

“ But the first and most natural place where the flowers of the sanctuary should almost spontaneously grow and bloom, remains always the truly and deeply Christian family. Most of the saintly bishops and priests whose ‘ praise the Church declares’ (Ecclus. 44, 15), owe the beginning of their vocation and their holiness to the example and teaching of a father strong in faith and manly virtues, of a pure and devoted mother, and of a family in which the love of God and neighbour, joined with simplicity of life, has reigned supreme. To this ordinary rule of divine Providence exceptions are rare and only serve to prove the rule. In an ideal home, the parents, like Tobias and Sara, beg of God a numerous posterity ‘ in which Thy name may be blessed for ever ’ (Tob. 8, 9), and receive it as a gift from heaven and a precious trust ; they strive to instil into their children from their early years a holy fear of God and true Christian piety ; they foster a tender devotion to Jesus, the Blessed Sacrament and the Immaculate Virgin ; they teach respect and veneration for holy places and persons. In such a home the children see in their parents a model of an upright, industrious and pious life ; they see their parents holily loving each other in our Lord, see them approach the Holy Sacraments frequently, and not only obey the laws of the Church concerning abstinence and fasting, but also observe the spirit of voluntary Christian mortification ; they see them pray at home, gathering round them all the family, that common prayer may rise more acceptably to heaven ; they find them compassionate towards the distress of others and see them divide with the poor the much or

the little they possess. In such a home it is scarcely possible that, while all seek to copy their parents' example, none of the sons should listen to and accept the invitation of the Divine Master : ' Come ye after Me, and I will make you to be fishers of men' (Matthew 4, 19). Blessed are those Christian parents who are able to accept without fear the vocations of their sons, and see in them a signal honour for their family and a mark of the special love and providence of our Lord. Still more blessed if, as was oftener the case in ages of greater faith, they make such divine visitations the object of their earnest prayer."

#### 7. Blameworthy Parents

" Yet it must be confessed with sadness that only too often parents seem to be unable to resign themselves to the priestly or religious vocations of their children. Such parents have no scruple in opposing the divine call with objections of all kinds ; they even have recourse to means which can imperil not only the vocation to a more perfect state, but also the very conscience and the eternal salvation of those souls they ought to hold so dear. This happens all too often in the case even of parents who glory in being sincerely Christian and Catholic, especially in the higher and more cultured classes. This is a deplorable abuse, like that unfortunately prevalent in centuries past, of forcing children into the ecclesiastical career without the fitness of a vocation. It hardly does honour to those classes of society, which are on the whole so scantily represented in the ranks of the clergy. The lack of vocations in families of the middle and upper classes may be partly explained by the dissipations of modern life, the seductions which, especially in the larger cities, prematurely awaken the passions of youth ; the schools in many places, which scarcely conduce to the development of vocations. Nevertheless, it must be admitted that such a scarcity reveals a deplorable falling off of faith in the families themselves. Did they indeed look at things in the light of faith, what greater dignity could Christian parents desire for their sons, what ministry more noble than that which, as We have said, is worthy of the



reverence of men and angels? A long and sad experience has shown that a vocation betrayed—the word is not to be thought too strong—is a source of tears not only for the sons but also for the ill-advised parents; and God grant that such tears be not so long delayed as to become eternal tears.”

#### 8. Holiness required in Priests

“ If your work is to be blessed by God and produce abundant fruit, it must be rooted in holiness of life. Sanctity, as We have said above, is the chief and most important endowment of the Catholic priest. Without it, other gifts will not go far ; with it, even supposing other gifts to be meagre, the priest can work marvels. We have the example of S. Joseph of Cupertino, and, in times nearer to our own, of that humble Curé d’Ars, S. John Mary Vianney, whom We have willed to set up before all parish priests as their model and heavenly Patron. Therefore, with the Apostle of the Gentiles, We say to you : ‘ Behold your vocation ’ (1 Cor. I, 26) ; and beholding it, you cannot fail to value ever more highly the grace given to you in ordination and to strive ‘ to walk worthily of the vocation in which you are called ’ (Ephes. 4, 1).”

#### 9. Spiritual Exercises for Priests

“In this striving you will be most wonderfully helped by a practice commended by Our Predecessor of holy memory, Pius X. This commendation is contained in His ‘ Exhortation to the Catholic Clergy ’ (Aug. 4, 1908). In it, among all the means to preserve and increase the grace of the priesthood, he placed first the use of the Spiritual Exercises. This means We Ourselves have also frequently recommended ; and particularly in Our Encyclical Letter *Mens Nostra*, we have paternally and solemnly urged it upon all Our sons. As the year of Our priestly Jubilee drew to a close, We could find no better and more salutary reminder of that happy anniversary, than to give to Our sons an invitation, through the above-mentioned Letter, to draw more copiously from the waters of life springing up into life everlasting (John 4,



14), this inexhaustible fountain providentially opened by God to His Church. Again now, to you My dear Brethren, who are all the closer to Us because you work more directly with Us to establish the Kingdom of Christ upon earth, We believe We cannot give better proof of Our Fatherly affection than by exhorting you most fervently to make use of this means of sanctification to the best of your abilities. Take for your guide those principles and norms laid down by Us in the above-mentioned Encyclical. It is not enough to withdraw to the sacred seclusion of the Spiritual Exercises only at the intervals and in the exact measure prescribed by ecclesiastical law, but you should enter into retreat more often and for longer periods, as far as possible to you, and you should consecrate in addition a day of each month to more fervent prayer and greater recollection, according to the practice of priests of greater zeal.

“In such retreats and recollection, even one who may have entered *in sortem Domini*, not by the straight way of a true vocation, but for earthly or less noble motives, will be able to ‘stir up the grace of God’ (2 Tim. 1, 6). For he, too, is now indissolubly bound to God and the Church, and so nothing remains for him but to follow the advice of S. Bernard : ‘ If sanctity of life did not precede, let it at least follow . . . for the future make good your ways and

God and specifically that grace proper to the Sacrament of Holy Orders, will not fail to lend aid if he sincerely wishes to correct whatever was originally amiss in his purpose or conduct. However it may have come about that he undertook the obligations of the priesthood, the abiding grace of this divine Sacrament will not be wanting in power to enable him to fulfil them.

“Each and all of you then, from the recollection and prayer of a retreat will come out fortified against the snares of the world, quickened by lively zeal for the salvation of souls, and enkindled with the love of God as befits priests in times like the present. For together with so much corruption and diabolic malice, there is everywhere felt a powerful religious and spiritual awakening, a breath of the Holy

Spirit, sent forth over the world to sanctify it, and to renew with its creative force the face of the earth. Filled with the Holy Ghost, you will communicate this love of God like a holy fire to all who approach you, becoming in a true sense bearers of Christ in a disordered society, which can hope for salvation from Jesus Christ alone, since He and He alone is ever the true Saviour of the world. . . .”

#### 10. To Students for the Priesthood

“ Before concluding, We turn Our thoughts and Our words, with very special tenderness to you who are still in your studies for the priesthood ; and urge you from the depth of Our heart to prepare yourselves with all seriousness for the great task to which God calls you. You are the hope of the Church and of the people who look for so much, or rather everything, to you. For to you they look for that living and life-giving knowledge of God and of Jesus Christ, in which is eternal life. In piety, purity, humility, obedience, discipline and study strive then to make yourselves priests after the Heart of God. We assure you that in the task of fitting yourselves for the priesthood by solid virtue and learning, no care, no diligence, no energy can be too great, because upon it so largely depend all your future apostolic labours. See to it that on the day of your ordination to the priesthood, the Church find you in fact such as she wishes you to be, that is ‘replenished with heavenly wisdom, irreproachable in life and established in the ways of grace,’ so that ‘the sweet odour of your life may be a delight to the Church of Christ, that both by word and good example you may build the house, that is, the family of God.’

“ Only thus can you continue the glorious traditions of the Catholic priesthood and hasten that most auspicious hour when it will be given to all humanity to enjoy the fruits of the peace of Christ in the Kingdom of Christ.”



## CHAPTER III

### THE HOLINESS OF THE CLERICAL STATE

#### SECTION 1. Holiness to be acquired

The decrees of the First Synod of Westminster speak in the plainest terms of the holiness that is rightly demanded from those who embrace the clerical state. There is no need to compare the clerical and the religious states from the point of view of the different degrees of perfection, if indeed there is any difference, to which the cleric and the Religious are to aspire respectively. There is surely no degree of perfection to which the secular cleric may not attain and to which he should not aspire. Sainly priests and bishops who have been canonized were the more efficient in their pastoral duties for their holiness, such as S. Francis of Sales and S. John Viarmey. If one has to say with all theologians that the religious state is a state of perfection, all that is meant is that Religious are bound to aim at the perfection of charity by the observance of the three evangelical vows and the observance of their rules. Their state is therefore rightly called a state of perfection, both because of what Religious aspire to, and the stability of their life. The clerical state of those below the rank of bishop does not imply the obligation of aiming at perfection, but there is no point of perfection, which ultimately means union with God by love, to which the secular clergy cannot attain. All controversy, therefore, about the relative perfection of the two states is a matter of words and should be put aside. The good Religious, who is himself not a priest, must acknowledge his immense inferiority in the hierarchical scale, and the good secular priest should encourage a boy who has the sign of a vocation to religious life to become a Religious. The Westminster Synod reminds us that “those are styled by our Lord the salt of the earth by whose ministry men are to be preserved from the corruption of vice. . . . If the light of the pastor so shine before men that they shall glorify his Father Who is in heaven, and if the



priest show himself an example of good works, in doctrine, in integrity, in gravity (Tit. 2, 7), so that those who are opposed to us may fear, having no evil to say of us, then assuredly will he build up the honour of God with living and elect stones, and as the offspring of the Church and the multitude of the faithful increase, he will enlarge the place of his tent and stretch out the skins of his tabernacle

## SECTION 2. Holiness of Life

The Fourth Synod of Westminster goes into more exact details concerning the actual life of the priest. It tells us that priests should scale the heights of sanctity, that they who are engaged in the divine mysteries acquire a regal dignity and should be men of perfect virtue. It reminds priests of those words in the rite of ordination, namely, “that they have been chosen by God in order that, being distinguished for that wisdom which comes from on high, for soundness of character, and for a lengthened course of godliness, keeping the commandments of the law by the help of the sevenfold Spirit, they may be seasoned and ripe in knowledge and in deed, and that they may keep unimpaired chastity and sanctity of life, and the pattern of perfect justice may be manifested in them.”

The priest, so we are reminded by the Synod, is set before the world as the living image of the life of Jesus. He is the companion of Christ, shares with Him the mission given to Him by His Father : “As the Father has sent me, I also send you.” The priest participates with Christ in His power over the natural Body of Christ in the Eucharist, and the mystical Body of Christ, the faithful of the Church. By their Sacred Orders, priests are appointed to the highest of all ministries, by which service is paid to Christ Himself in the Sacrament of the Altar, and for this there is need of greater holiness than the religious state demands, and since priests are the friends and associates of Christ, to them very particular graces are given. In the priest should live and reign the most holy Heart of Jesus, the principle and source of love and fervour.

Since the vocation of the secular priest on the mission is so exalted, and as a fall from a high state of grace is more terrible and disastrous, he is surrounded by numerous safeguards and he must be faithful in the observance of his priestly duties and customs. The Church commands him to recite the divine office, which should, as the Fathers of the Westminster Synod pointed out, secure for him a term of repose amidst the labours of charity. It will not be so, if the divine office is recited as a task and hurriedly. The daily reception of the Blessed Sacrament will shield the priest from all dangers in his ministry, but only provided he receives It fervently, with due preparation and thanksgiving. His daily meditation, his daily visit to the Blessed Sacrament, even his dress, will draw him from the world and all its sinful maxims, setting him apart as one dedicate to the higher life.

To retain all the first fervour of his holiness on the occasion of his ordination, or to retain a part of it, which would indeed be a great deal, the priest on the mission must make holiness the business of his life, and not expect the state itself to put the seal of holiness on a worldly or indifferent life. Therefore, practically, the priest must prepare for Mass by meditation ; he must make a full and fervent thanksgiving ; he must make a daily examination of conscience, read spiritual books frequently, make his retreat away from all occupation, recite the Rosary daily, resist the tendency of reading many newspapers, periodicals and novels, and realize that of all the foolish aims the most foolish would be to attempt to keep abreast with the light literature of the day.

## CHAPTER IV

### THE RIGHTS AND PRIVILEGES OF CLERICS

(cc. 118-123)

Clerics alone are capable of receiving the power of Orders and ecclesiastical jurisdiction and of obtaining benefices and ecclesiastical pensions.

All the faithful owe reverence to clerics, for they are set apart by the Church for the worship of God ; those, therefore, who inflict external injury on the person, liberty, or dignity of a cleric are guilty of sacrilege, that is, of a special sin against the virtue of religion.

The privileges common to all clerics are those of the ' canon,' of the ' forum' and of immunity from military service and all public civil duties and offices which are alien to the clerical state. The privilege of the ' canon ' is the safeguarding, by means of censures, of a cleric from external injury ; it is the privilege of personal inviolability, or simply called privilege of the ' canon,' that is of canon 15 : *Si quis suadente diabolo* of the Second Council of Lateran (1139). The violation of the canon carries with it excommunication (c. 2343). The privilege of the ' forum ' or the Court, is the exemption of all clerics from civil suits or criminal prosecutions ; it is the exemption of clerics from lay judicial process. To be brought before a lay tribunal means to be summoned as a defendant. But concordats, concession by Superiors, and custom allow exception to be made. Violation of this privilege carries with it ecclesiastical punishments, sometimes excommunication (c. 2341).

The privilege of immunity from military service and certain public civil offices and duties, such as to serve on the panel of a jury in criminal cases, is granted to clerics in so far as these duties are inconsistent with the dignity of their state. The immunity is personal ; there is no immunity from taxation. Ecclesiastical students who have not received the tonsure do not enjoy this privilege.

The privilege of competency is a privilege whereby, in



case of insolvency, a cleric should be allowed to retain what he needs for decent support, according to the prudent judgment of the ecclesiastical judge, on condition, however, that he will pay his creditors as soon as he can.

A cleric cannot renounce his privileges but he will lose them by having been degraded to the lay state and by perpetual deprivation of the right to wear ecclesiastical dress. If the penalty is remitted, or if he is re-admitted to the clerical state, the privileges are restored.

## CHAPTER V

### THE OBLIGATION OF HOLINESS, OBEDIENCE AND STUDIES (cc. 124-144)<sup>1</sup>

#### SECTION 1. The Means of Holiness

Clerics are bound to lead a holier life than laypeople, both interiorly and exteriorly, and to give an example of virtue and upright conduct. In order that they may do so some of the means are specified, and the local Ordinary must see that all clerics frequent the Sacrament of Penance, daily spend some time in mental prayer, visit the Blessed Sacrament, recite the Rosary of the Blessed Virgin, and examine their consciences (c. 125). Frequent and even daily Holy Communion is to be advised to them as to all others. These pious practices are not strictly obligatory by law on all clerics, but the canons pronounce them as the ordinary necessary means of acquiring that sanctity of life which is demanded of clerics by divine law.

All secular priests are to make a retreat at least every third year for a fixed space of time and in some pious or religious house, both to be determined by their bishop, who may give exemption in a particular case for a just reason (c. 126). The retreat is meant by the Church to be a renewal of fervour and to provide time for examining into past occasions of tepidity or sloth, seeking the grace of God to resist temptations and worldly views. As spiritual retreats are most helpful even to lay people, they are necessary for priests. During a retreat, the priest should spend very much time in prayer, vocal and mental, in silent communing with God, reciting his divine office with unusual care, seeing to the correct saying of his Mass, cutting away eccentricities and inordinateness in his life. The time of retreat will be ill-spent if it is used for conversation with fellow-priests, preparing sermons, balancing accounts, writing business letters, or doing anything but the work of the retreat.

<sup>1</sup> cf. Encyclical letter of Pope Leo XIII to the Archbishops, Bishops and Clergy of France (1899).

## SECTION 2. Obedience

Great reverence and obedience towards their bishop are to be shown by all clerics and by priests most of all, and therefore these must undertake and faithfully fulfil the office given to them by their bishop whenever and for as long a period as he shall think it right for the needs of the Church, unless, of course, some legitimate obstacle excuses. They will, therefore, be content to take up the duties of teaching boys in colleges, if necessary, or students in seminaries, being willing to forgo the pastoral work for which, perhaps, they feel they have special aptitude, and in their teaching they will be punctilious in acting in accordance with the policy and wishes of their bishop. Secular clerics are obliged to reverence and obey their respective Ordinaries because they have freely entered into the clerical state ; priests, in addition to this obligation, are under that of their promise at ordination. The latter obligation is one of fidelity, not of vow. The Church enforces these obligations by the canons (c. 127).

## SECTION 3. Clerical Studies

Clerical studies, especially those of the sacred sciences, are not to be given up after ordination. There is, indeed, a very great need of solid learning in these days, when the people of this country are looking to the Catholic Church for guidance in doctrine and morality, and are very insistent on probing the validity of all the proofs, scriptural, patristic, and rational, that are usually given in the schools. The dogmatic treatises, Moral Theology, and Canon law should be the constant study of the priest on the mission. He is, furthermore, warned by the canons to follow the solid doctrine in the sacred sciences that has been traditional and is commonly received in the Church, “ turning away from the profane babblings and subtleties of so-called ‘ knowledge,’ which some have professed and have erred in faith” (i Tim. 6, 20). In order that clerical studies may be faithfully continued, the canons prescribe an examination yearly for three years after the completion of studies, and bishops



are to give the preference, other conditions being equal, in appointing to ecclesiastical offices and benefices those who have been conspicuously successful in these examinations. The bishop may grant occasional exemption for a just reason, and it is within his power to refuse to give faculties to and withdraw them from those who are negligent in these examinations.

Conferences on cases of conscience, as they are called, and on the sacred Liturgy are to be held at the deaneries several times each year. All priests who have the cure of souls are to be present, even exempt Religious if they are engaged in pastoral work, unless exempted by the bishop or by law.<sup>1</sup> It is customary for the case given to be solved at length by one of those present and for all others present to bring a summary solution written. In the event of absence, written solutions of the case are to be sent, unless previous exemption has been granted by the bishop.

<sup>1</sup> P.C.C.J., Feb. 12, 1935. The exempt Religious meant are those who are curates, or Chaplains of hospitals and other pious houses, if, in accordance with canon 476, 6, they take the place of the parish priest and help him in all the parochial ministry'.

CHAPTER VI

THE OBLIGATION OF CELIBACY (cc. 132, 133)

The present legislation of the Church on clerical celibacy is as follows.

Clerics in major Orders are forbidden to marry and they are bound to chastity so that they sin sacrilegiously if they violate this obligation. However, a cleric who has been forced by grave fear to receive Sacred Orders and who did not, when the cause of fear was removed, ratify his ordination at least tacitly by the exercise of the Orders received, intending thereby to submit to his clerical obligations, is to be laicized, if both the duress and the defect of ratification have been legitimately proved, and thereafter he is not under the obligation of celibacy (c. 214). Minor clerics can indeed marry, but if they do, they cease to belong to the clerical state, unless their marriage was invalid in consequence of duress or fear. A married man who, without dispensation, has received major Orders, albeit in good faith, is forbidden to exercise them.

Clerics in major Orders are, therefore, bound by present Ecclesiastical law to observe perfect chastity ; attempted marriage is void. The vow of chastity is annexed by the Church to the subdiaconate and is a solemn vow. Those who enter upon the subdiaconate know their obligations, and at least implicitly take the solemn vow. Opinions differ as to the immediate and direct source of the obligation of chastity, that is, whether it arises from law, or vow, or is an effect of both ; but whatever the source, the violation of chastity by those in Sacred Orders is a sin against chastity and religion, and is a sacrilege. The vow extends to internal acts. The obligation of chastity would bind a subdeacon even if, at the moment of ordination, he did not think of it nor explicitly intend to accept the obligation. If he intended not to undertake the obligation, he would be bound to change his mind and take the vow. In the very rare case of one who knew nothing about chastity, his ordination and obligation

of chastity would be similar to the case of one ordained in infancy or under the influence of fear (c. 214).

Dispensation from the law of celibacy can be granted by the Pope alone. It has been granted to deacons and subdeacons and even to some priests, as in Tudor times in England, and after the Revolution in France. If it were given nowadays, the priest would not be allowed to exercise any of his sacred functions.

As a safeguard to the chastity of clerics, the law forbids them to allow women, on whom any suspicion might fall, to live in the same house with them or be visited by them. The law permits clerics to retain in their houses those women, the natural kinship with whom would disarm criticism, such as mother, sister, aunt and the like, or again, those women of mature age whose well-known good moral character would preclude all criticism. The Fourth Synod of Westminster prescribed that schoolmistresses and pupil teachers should be strictly forbidden ever to live in any presbytery, unless for a reason known to the bishop and approved by him in writing. The women who act as servants in the presbyteries should be of advanced years, an age which, by the prescription of some former Synods, was forty, but reduced to thirty in particular circumstances and even increased to fifty. Moreover, these women should be well known for their modesty, prudence and irreproachable lives. “ And therefore,” the Fourth Synod continues, “ priests should beware of certain women who, by their domineering ways, their contempt for Christ’s poor, and their mischief-making spirit, become real plagues in a mission.” It is not for the priest but for the bishop to judge whether the retention of women in presbyteries, or visits paid to those on whom no suspicion would usually fall, might in some special case be a cause of criticism or a danger to the priest. Any priest who disregards the admonitions of his bishop in these matters is legally presumed guilty of concubinage.



## CHAPTER VII

### THE OBLIGATIONS OF LIFE IN COMMON AND DIVINE OFFICE (cc. 134,135)

#### SECTION 1. Life in Common

Holiness of life is greatly assisted by living with other priests, and therefore the canons commend life led by clerics in common, urge it and prescribe that it shall be continued, if possible, where it is in vogue. The advantages of priests living together are generally speaking obvious, for there will then be a certain regularity of life, reasonable hours for returning home at night will be observed, punctuality in saying Mass will be safeguarded, the needs of the parish will be common knowledge, valuable lessons of humility and forbearance will be learnt, eccentricities will be fewer, the knowledge of theology, dogmatic and moral, should be extended and deepened, the Canon law will be referred to with great profit, common Catholic action will be the more easily taken, Catholic activities will be the better known and helped. Such and many more benefits will be the result of life in common, provided allowance is made by each for the others, and if their common life is spiritual and unworldly.

#### SECTION 2. Recital of Divine Office

##### 1. The Obligation

Clerics in major Orders, unless laicized (c. 214;), are bound to recite daily the canonical Hours according to their own approved liturgical books. The obligation begins for secular clerics with the reception of the subdiaconate and with the part of the office corresponding to the time of ordination. The obligation of reciting the office includes the obligation of obtaining new approved offices, but the Holy See does not intend to bind a cleric to get the new and reformed lessons if he recites his breviary according to an

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existing edition.<sup>1</sup> On the feast of S. Mark and on the three Rogation days the Litanies of the Saints are also to be recited, publicly or privately. They cannot be anticipated. It is doubtful whether the obligation of private recitation of the Litanies is grave.

## 2. The Manner of Recital

The recitation of the office must be vocal ; formation of syllables with lips and tongue without audible sound is sufficient. The words are to be pronounced entire, without syncope, especially of final syllables, which, if deliberate, would be a venial sin unless entirely negligible. The recitation must be devout and therefore the intention, at least virtual, of worshipping God must be present. It is present when the breviary is taken up to fulfil the obligation. Furthermore, attention at least external is necessary, that is, the attention that excludes all exterior acts incompatible with interior attention. Voluntary distraction is venially sinful, as it is in all prayer, but it does not prevent the obligation being fulfilled ; the precept can be fulfilled by one in mortal sin. The recitation must be substantially uninterrupted in each Hour of the office, unless some reasonable cause intervene ; deliberate interruption without cause is a venial sin, but no repetition need be made unless the interruption took place in a verse of a psalm. Matins may be separated from Lauds and the Nocturns may be separated from one another indefinitely. The substitution of another office from the Roman breviary for that prescribed is permissible for a moderate reason, but the substitution of a notably shorter office and one that is of a very different character would be a grave sin, as to recite the paschal office on Palm Sunday<sup>2</sup> ; at the same time, accidental substitutions of office for office satisfies the precept, but when the error is discovered it should preferably be corrected at once. In default of the office proper to a Saint the common may be said.

<sup>1</sup> S.R.C., Dec. 14, 1883 ; Verm., III, n. 37.

\* Pope Alexander VII, pr. d. 34.



3. The Order of Recital

In regard to order and obligation of saying the office, the respective times of the Hours should be retained, if conveniently possible, but in the private recitation there is no obligation to do so. Matins and Lauds should be recited before Mass ; Prime and Terce before midday ; Sext and None between midday and Vespers ; Vespers and Compline midway between midday and sunset. Local time either true or mean solar, legal time, whether regional or other, may be used in private recitation (c. 33).

The office of one day must be finished before the office of the next day is begun, unless a sufficient reason excuses, but Matins and Lauds of the following day may be anticipated from 2 p.m. Matins and Lauds of the morrow may be anticipated from midday of the previous day by those who have the privilege of doing so, as the members of the Pious Union of Priests of the Missions (or those going to be members), provided the office of the day has been finished, and a good reason exists.<sup>1</sup> It is allowed to defer Compline till night though Matins and Lauds of the morrow are anticipated. From the first Sunday of Lent to Holy Saturday, Vespers (not Compline) may be recited after the hour of the conventual Mass and None, except on the Sundays. A bishop, about to celebrate Pontifical Mass, satisfies his obligation of the canonical Hours (Terce, etc.), though he recites the prayers prescribed by the Pontifical Ceremonial. Those who, during the public recitation of office, are engaged in arranging books, incensing the altar, are not bound to repeat what they did not themselves recite or hear recited because the choir, whom they are serving, supply for them. The same cannot certainly be said for one who plays the organ.<sup>2</sup> A bishop who celebrates pontifically at Vespers or in the Litanies procession must recite what has to be recited unless he is impeded by some ceremony prescribed by the Ceremonial as indeed he may be.<sup>3</sup> The divine office is a

<sup>1</sup> S.C.P.F., Dec. 2, 1921.  
<sup>2</sup> Verm., III, n. 48 ; S. Alph., lib. 4, n. 143 ; Bucc., III, 109.  
<sup>3</sup> S.C.C., July 10, 1921.

task annexed to the twenty-four hours of the day from midnight to midnight ; if, therefore, it is said between those points of time, the duty is substantially fulfilled.

4. Omission of Divine Office

It is commonly held that the omission of a small Hour or its equivalent in length is serious, not by reason of the quantity, but because it is an integral part of the service of praise and worship which the Church wishes clerics to offer to God, so that all the hours of the day and the night may be dedicated by the service of prayer to God. But since the lessons are not strictly prayers but narratives, the omission of three lessons with their responsories is held to be a venial not a mortal sin. Small portions of the divine office omitted on the one day could accumulate and become a grave omission.

5. Reasons excusing from Recital

Certain causes excuse from the recitation of the office. The following are noteworthy : Physical impossibility, such as defective sight, very bad light, want of a breviary of the proper rite, though if a notable part of the office can be recited without the breviary it must be recited. Moral impossibility or grave inconvenience or the probability of such inconvenience excuses. In serious doubt, there is no obligation. Though one might be able to read light literature for hours together, the recitation of the office might, with an acute headache, be very laborious. The danger of exciting atheists to blasphemy would certainly excuse one from reciting the office on a journey. The real necessity for food, recreation or sleep, service of the sick, great numbers of confessions to be heard, urgent preparation of a sermon, laborious visiting of the sick, the giving a retreat or mission, if these require lengthy preparation or close and continuous and tiring concentration, and work to be done immediately, excuse from office. All such excusing causes must be honestly weighed, but without scrupulosity, and with that reasonable and prudent application in one's own case which would be made in the case of another. The Sunday work of priests



on the mission, when it is ver}l arduous, as it is when a priest has to duplicate, preach twice, give catechism, baptize infants, and perhaps go out collecting, such an amount of work exempts the priest from the Sunday office. Add to the above, dispensation granted by confessors who have the privilege of dispensing, and commutation, when this can be given. The local Ordinary can dispense from office on rare occasions for a good reason and in urgent cases.

The substitution of three Rosaries or one Rosary for the divine office is not valid apart from privilege. If a priest is exempt from office on a given day, it is usual for him to recite a Rosary in place of the office, though he is not obliged to do so. When the whole office for a given day cannot be recited, a part should be recited if possible. If one foresees a difficulty likely to arise after midday to prevent recitation of the office, all of it to Vespers should be said, if possible, before midday. It is probably not necessary to say Vespers and Compline before midday.

#### 6. Prayerful Recital

Since the recitation of the divine office is a prayer, it should preferably be recited in one's room or in presence of the Blessed Sacrament. The plenary and partial indulgences which can be gained by recitation in presence of the Blessed Sacrament have been mentioned above;l prayers for the Pope's intention should also be said. To recite the office in tramcars, crowded trains, in the streets of a city, is not conducive to recollection, though for a reasonable cause it may be recited in those places.

#### 7. The Calendar

In regard to the Calendar to be followed, these points are noteworthy :

Beneficed clergy recite the office of their own church. Priests without a benefice follow their diocesan Calendar ; when on a journey and passing through various dioceses they follow their own Calendar, but if they stay for a time in another diocese, they may follow the Calendar of the place in which they are. Religious, obliged to sing office in choir,

'Vol. III, p. 423.

who are staying in another house of their Order, follow in choir the Calendar of that house. If they are not obliged to recite office in choir, they may follow their own Calendar during a month's stay in another house.

On a journey, Religious follow their own Calendar. If they are staying outside a house of their own Order, they follow the Calendar of their Province.

Priests sometimes recite office with one another during times of retreat. When the office is recited by several in common, each must recite at least alternate verses of the psalms. One priest may recite antiphons, chapters, lessons and prayers for the rest who listen. But an effort must be made to listen with at least external attention to the parts recited by others ; if one cannot hear at all one should recite those parts secretly.





of the local Ordinary to insist on custom in this matter being maintained.

Clerics may not wear a ring unless the right to do so is given by law or an Apostolic indult. The ring contemplated is that used as an ornament or a mark of privilege or dignity.

## CHAPTER IX

### CERTAIN THINGS FORBIDDEN TO CLERICS

(cc. 137-142)

#### SECTION 1. Surety and Gaming

Since a certain peace of mind is required in the clerical state for the due performance of sacred functions, clerics are forbidden to go bail even on their own private property without consulting the Ordinary. Originally, a cleric who became surety for another was deposed, and the Decretals absolutely forbade the practice. Custom has, however, mitigated this severity.

Clerics are to abstain from those actions which are unbecoming to their state. The canons mention some examples. Thus, clerics are not to engage in occupations that are indecorous. They are not to indulge in games of chance for money. The prohibition is not levelled against an occasional game but against habitual gaming for money. Some modern Councils made the distinction between games that depend on chance alone and such as also require skill. Diceing and card-playing are examples. The First Provincial Council of Baltimore forbade card-playing, but the decree was modified later. Though card-playing for money is not forbidden, provided there is no scandal, nevertheless, the late hours and drinking that are sometimes the accompaniments of card-playing lead to a great loss of time, and are often fatal to the morning meditation before Mass. Indulgence in such things is a great danger to the priestly life, most of all in the early years. The time thus given, if habitually given, to the game is needed for study, reading and sleep, not to say for prayer.

#### SECTION 2. Lethal Weapons

Clerics may not carry lethal weapons, except when there is a just reason for fear of attack. What is particularly forbidden is the carrying such weapons openly. If the



weapons are carried secretly the sin would not be grave. There is no prohibition against keeping such weapons at home, nor in carrying them for purposes of shooting game.

### SECTION 3. Hunting

Clerics may never take part in the clamorous sort of hunting, nor make a practice of indulging in the quieter sort. The original prohibition was against the chase, with hawks, hounds and falcons. It was even forbidden to set dogs at wild animals with the view to capture. The noisier sort of hunting is that in which numerous hounds and horses are employed, such as the modern foxhunt, not the quieter sort in which nets, a gun and only one or two dogs are employed. To follow a clamorous hunt as spectator is not to hunt, though it might give rise to scandal in some countries. It does not do so in England, if done only occasionally.

### SECTION 4. Frequenting Taverns

Clerics are forbidden to enter taverns, inns and all similar places without necessity, or without some other just reason approved by the local Ordinary ; it is supposed, of course, that these places are reputable. The canon regards such taverns as those where liquor is sold to all comers and where there is a bar or something similar. In this country, public-houses would fall into this category, not restaurants, cafés, buffets, hotels, if they are known to be respectable, as they usually are. No cleric could enter a night-club, however, without giving scandal. Local custom interprets the law in England, though particular prohibitions might come into force in a diocese.

### SECTION 5. Medical Practice

Clerics must avoid all avocations which, even though in themselves becoming, are contrary to the clerical state. The canons give examples. Thus, they may not practise medicine or surgery without Apostolic induit. Medical assistance given in an emergency is not forbidden, nor the prescription of very common remedies known to everyone.

Missionaries obtain an induit, but this does not include surgical operations or cautery, such as would endanger life or imply mutilation. It is probably not forbidden to prescribe for one's family or community. The exercise of forbidden medical or surgical practice is a grave sin and if the death of the patient ensues irregularity is incurred (c. 985, 6).

#### SECTION 6. Legal Avocations

Clerics may not act as public notaries except in Ecclesiastical Courts. They may not, without Apostolic induit, hold public offices which imply the exercise of lay jurisdiction or administration, such as President of a State, governor, mayor, judge, treasurer of lay associations. Without permission of the Ordinary, a cleric may not administer the property of laypeople or undertake private secular offices that impose the obligation of rendering an account, such as treasurer of private banks or stores or any associations even of a benevolent character. Clerics may not exercise the function of procurator or advocate except in Ecclesiastical Courts, or in the Civil Court where their own cause or that of their particular church is concerned. In criminal trials, when a grave personal penalty, as capital punishment or imprisonment, may be inflicted, clerics are to take no part, not even in giving evidence, without necessity.

#### SECTION 7. Legislative Activity

Without the permission of the Holy See, where such permission is by special decree required, and where it is not required, without the consent of the Ordinary, a cleric may not seek or accept membership in a legislative assembly. The consent both of the cleric's own Ordinary and of the Ordinary of the place where the election takes place is to be obtained (c. 139).

#### SECTION 8. Public Exhibitions

Clerics may not be present at theatrical representations and other exhibitions, such as horse-races, bull-fights, prize-fights, cinemas, nor at balls and dances, nor other public shows, if their presence is unbecoming to their state



or would give rise to scandal, especially if the place is a public theatre. By common law, therefore, the prohibition is conditioned by two factors, namely, the unbecoming character of the shows or the likelihood of scandal. Local prohibition may go farther, as in England, against plays in theatres or in places serving as theatres, in Ireland against public horse-races, in Rome against cinemas. Clerics, both secular and regular, are forbidden to promote or get up public dances even under the plea of helping a good cause, nor may they be present at dances got up by laypeople.<sup>1</sup> Even getting up dances at picnics was forbidden.

For England and Wales, the Fourth Synod of Westminster (1873) laid down the following prohibition : “We strictly prohibit ecclesiastics who have received Sacred Orders from being present at scenic spectacles in public theatres or in places temporarily made use of as public theatres, under the penalty to transgressors of suspension to be incurred *ipso facto*, such as hitherto has been the rule in all parts of England, with reservation to the respective Ordinaries.” At the annual meeting of the bishops, 1890, their Lordships excluded from the prohibition plays performed by school children, but included amateur theatricals performed by others than children, even for the benefit of a charity, in a public hall, whether licensed or unlicensed. At the annual meeting, 1905, their Lordships decided that plays acted in school buildings, even by adults, did not come under the censure.<sup>2</sup> Parish halls are equivalent to school buildings.

The Secretary of the Consistorial Congregation in a reply (August 2, 1919) to the Archbishop of Birmingham, stated that a priest of one Province who, contrary to the prescription of the Westminster Synodal decree, went to a theatre in another Province, incurred the penalty of suspension. The suspension is reserved to the local Ordinaries by the very fact that it is stated to be so in the *pagella* of faculties given to each priest.<sup>3</sup>

<sup>1</sup> S. C. Cons., March, 1916 ; Dec., 1917.

<sup>2</sup> cf. *Decrees of the Leeds Synods*, p. 142.

<sup>3</sup> cf. *The Clergy Review*, Feb., 1932. It would perhaps be better to say that the suspension is promulgated in Diocesan Synod.



## SECTION 9. Military Service

Clerics are forbidden to volunteer for military service or to enter the army of their own accord, unless they do so with the permission of the Ordinary so as to be the sooner free from military obligations. They are also forbidden to give assistance to civil wars or disturbances of public order. A cleric in minor Orders who, contrary to this prescription, freely joins the army, becomes laicized.

## SECTION 10. Trading

Clerics are forbidden to indulge in any commercial transaction *{negotiatio}* or trading *{mercatura}* personally or through others for the sake of gain whether for their own benefit or for that of others.

There are three kinds of trading : Economical, lucrative and politic. Economical trading is that which takes place when a person buys supplies for his own household and sells what is over at a profit. A cleric who buys goods for his own use or that of his household and later resells them or the residue at a profit does not trade in the strict sense. This, therefore, is not forbidden. Lucrative trading in the strict sense is to buy something so as to sell it unchanged at a profit. This is forbidden. Lucrative trading in a broad sense is to buy so as to sell the same goods at a profit after having changed them in some way, ie way, by art or industry. This kind of trading is also called artificial. The third kind of trading is politic, i.e., buying supplies for a large community, such as a town, and selling to individuals with or without profit. This is forbidden as being an unfit occupation for a cleric.

In the case of lucrative trading in the broad sense, if the change in the article was made by the cleric himself (as in the carving of a statue from wood), this trading is not forbidden as such, though the business might be unbecoming to the clerical state or engross too much time and attention. If the change in the articles was introduced by hired labour, the trading is then forbidden with the limitations mentioned later.

The following categories of trading are therefore forbidden. All that is unbecoming the clerical state ; all that is lucrative in the sense explained, both when the original articles are unchanged and when, though changed, hired labour has been employed.

The following categories of trading are not forbidden. All economical trading as explained above ; the sale of articles produced by one's own skill, art, or labour ; the sale of the product of one's own fields, trees, gardens, farms, flocks, herds, vineyards, even if hired labour has been employed ; the sale of sheep or cattle grazed on one's own pastures, even if bought to be fattened and sold ; the sale of books printed at one's own press ; the sale of one's own manuscripts for printing ; the buying, for profit, of fields for mining or pasturage or house-building. Two other examples may be given. The first, that of hiring fields from another in order to sell their produce if hired labour is employed. This is forbidden. The second, that of buying animals or machines for letting out at a profit. This appears to be permissible.<sup>1</sup>

The prohibition against trading is severe. Clerics or Religious who indulge in it contrary to the canons may be punished by the Ordinary (c. 2380).<sup>2</sup> The severe prohibition is against trading, not against a particular, isolated act of trading. It is, therefore, probable that a cleric who trades once or twice, even with a large sum of money, or who does so on separate and disconnected occasions, is not guilty of a grave sin of disobedience.<sup>3</sup> Permission may be obtained by a cleric to trade for the purpose of personal maintenance or the maintenance of the cleric's relatives. There is a species of trading done in objects of piety. The normal example is the sale with profit by priests on a mission and by religious communities of articles of devotion, such as rosaries, statues, pictures, prayer-books, votive candles, and the sale of the water of some sacred well. In all such cases, a small profit represents compensation for the labour and trouble

<sup>1</sup> Venn., III, n. 21.

<sup>3</sup> The character of the punishment is not specified in the canon. It is there stated that the Ordinary is to inflict penalties which are suitable, and in accordance with the gravity of the fault.

<sup>8</sup> Verm., III, n. 24.



of serving the convenience of others, reasonable interest on money, risk of loss, and money equivalent lying idle in the stock that has to be kept. But in these legitimate methods, all appearance of avarice and scandal must be avoided, and personal profit should rather be replaced by profit to the mission or church, for such profit ultimately reaches the people. Where custom sanctions such methods they may be continued ; where there is no such custom, the permission of the Ordinary must be obtained.

#### SECTION 11. Investments

The matter of debentures and shares has given rise to considerable discussion.<sup>1</sup> The following conclusions may, we believe, be adopted :

The purchase of debentures *{obligationes}* is the loan of money to Government or a company at interest. Assuming always that neither the purpose of such company nor its methods, as sweating, are objectionable, the holder of debentures is not engaged in trading. A cleric may, therefore, buy debentures in an industrial or commercial company. The purchase of shares *{actiones}* makes a shareholder a member of the company, with a right to vote and determine the policy of the company. To buy shares or debentures when prices are low in order to sell later when prices are high is certainly forbidden. It is certainly forbidden to gamble on the Stock Exchange.

There are three different views on the matter of buying shares in commercial companies. Some authors hold that a cleric may not buy shares in any such company. Others hold that it is unlawful to buy shares in trading or manufacturing companies, but not in railways or mines. Others hold that a cleric may buy shares in any company, whose purpose and methods are legitimate and irreproachable, provided that he takes no part in the direction of the company. Their reason is that there is no practical difference between bondholders and shareholders. There are a few replies which bear on the matter?

Scf. *LEJL.*, 1928, p. 418.

<sup>1</sup> cf. *IEL.R.*<sup>9</sup> *loc. cit.*<sup>9</sup> citing De Meester and Bizzarri.



Pope Gregory XVI (1841) allowed a certain priest to retain shares in a manufacturing company for five years. A Roman Congregation (Bishops and Regulars) decided against clerics of Citta di Castello acquiring shares in a banking business. The Holy Office (1857) issued an indult permitting them to purchase shares in railway companies, with, of course, their own money. The Holy Office (1875) permitted clerics to buy shares in railway and similar companies and in banking companies with the restrictions already mentioned. The Holy Office (1885) also allowed clerics to retain or to buy shares in banking businesses, provided they refrained from trading with the shares and from every appearance of Stock Exchange gambling.

We may, therefore, state these conclusions<sup>1</sup>:

The clergy may buy shares in industrial or commercial companies, provided that they are ready to accept the ruling of the Holy See, are satisfied that the purpose of the company is not unlawful, take no part in the management, and refrain from trading with their shares or gambling with them on the Stock Exchange. Consequently, in this matter, no distinction need be made between bondholders and shareholders, commercial and industrial companies. This is now the commoner opinion.<sup>2</sup> But the floating of the company by clerics might easily give scandal, lead to cupidity, and demand over-occupation in business matters. On those grounds it should certainly be avoided. It is not, however, contrary to the canons to sell out when the market is falling to preclude losses, nor to buy when the market is rising in order to make a good investment apart from all speculation.<sup>3</sup>

#### SECTION 12. Rotary Clubs

Clerics are forbidden to become members of Rotary Clubs, or to be present at the meetings. Lay persons are to be urged to observe the ruling of the canons (c. 684). This canon forbids the faithful to belong to societies which are secret, condemned, seditious, suspect, or which aim at withdrawing from the lawftd vigilance of the Church (S.O., Jan. 11, 1951).

<sup>1</sup> Dr. Kinane in *I.E.R.*\* *loc. cit.*

<sup>2</sup> cf. Venn., III, 22 ; McHugh and Callan, II, n. 2605.

<sup>3</sup> Verm., III, n. 22.



## CHAPTER X

### DEANS (cc. 445-450)

The local Ordinary is to divide his territory into districts, each comprising several parishes. The divisions are called deaneries, and the bishop's vicars are vicars forane or deans. The bishop chooses a worthy priest as dean, preferably one of the parish priests of the district. He is removable at the will of the bishop. He must visit the districts at times appointed by the bishop. Particular law, provincial or diocesan synods, may extend the faculties of the dean. By common law, a dean has the following duties and rights.

1. To see whether the clergy of his deanery lead a life in conformity with the sacred canons, fulfil their duties diligently, notably in respect of residence, preaching, catechizing, attending the sick.

2. To see whether the orders issued by the bishop at his visitation have been carried out. For this purpose the dean has a right to examine any instructions in writing which the bishop may have given.

3. To see whether suitable care is taken in respect of the altar breads and Mass wine, and whether the hosts are renewed at proper intervals.

4. To see whether cleanliness and order are carefully maintained in the churches and in respect of the sacred vestments and altar furniture, especially in all that relates to the reservation of the Blessed Sacrament and to the celebration of Mass. He may, therefore, examine the altar linen, the chalices and the tabernacle. He is to examine whether the sacred functions are carried out in accordance with the Rubrics ; whether the ecclesiastical property is carefully administered, and therefore to examine the parochial accounts ; whether the obligations annexed to property, especially in the matter of Masses, are duly discharged, and the parochial registers faithfully kept and preserved.

5. When the dean hears of the serious illness of a parish priest in his deanery, he must see that his spiritual and

physical needs are met and in case of death to see to his honourable burial. His duty is also to see that books, documents, sacred furniture, and other things that belong to the church are not lost nor carried off during the illness or after the death of the parish priest.

6. Moreover, the dean must convoke, on the dates appointed by the bishop, all the priests of the deanery to conferences and preside over them. His duty is normally to see that all are present, to write the minutes of the meeting, to make a brief summary of the solution of the cases proposed, to send all these to the bishop. It depends on the dean whether or not the cases of conscience are done carefully ; his knowledge of Theology and Liturgy must be above the ordinary, and his authority sufficiently regarded to decide a disputed point, if it can be decided on clear principle. He should be careful to give an exact report of differences of opinion. In these days of varying application of moral principles, even among Catholics, the dean must be able to check laxity, should it exist, in the views of any of the clergy, and base his conclusions on solid grounds and good authorities.

7. At least once a year, the dean must give an account to the Ordinary both of the good done and of any evil that has manifested itself in his district, or scandals that have arisen, what remedies he applied to the evil, and what means he thinks will be efficacious to eradicate evils if any exist.

8. The dean is to have a special seal. He has precedence over all the other priests of his district. He is entitled to a seat in the diocesan synod (c. 358). In cases of urgency, he may grant to administrators of churches permission to institute or contest a lawsuit in the name of the church, but the Ordinary must be apprised of this permission without delay (c. 1526).



## CHAPTER XI

### PARISH PRIESTS (cc. 451-470)

#### SECTION 1. Stability in the Pastoral Office

The canons state that stability in the pastoral office does not exclude the possibility of removal or transference in accordance with the prescriptions of the law (cc. 2147-2167).

The greater or lesser facility with which pastors can be removed or transferred determines the degrees of stability. Those pastors who possess stability in the highest degree are called irremovable ; those who possess it in a lower degree are called removable. For the administrative removal of irremovable pastors the canons assign as sufficient reasons ignorance, habitual infirmity, mental or physical, the ill-will of the people even if unjust, loss of good name, inefficiency in administering church property. This pastor's case, if he does not resign on being asked by the Ordinary, is submitted to two examiners. *If* he still refuse, the opinion of two parish priest consultants is sought. The Ordinary can give the final decision within ten days. Apart from administrative removal, the Ordinary may ask such a pastor to go to another parish, but he cannot transfer him against his will without special faculty from the Holy See (cc. 2162, 2163). For the administrative removal of the removable pastor, the causes are the same as already stated for the previous case. The mode of procedure differs. For good reasons the Ordinary may advise the pastor to resign. If the latter declines to do so, he must give his reasons in writing. These are examined by the Ordinary and two examiners, and if the reasons are not found to be valid, the pastor is again urged to resign within a fixed time. If he refuses, the Ordinary may pronounce a decree of removal. There is no appeal to a board of consultera.

Apart from administrative removal, the Ordinary may transfer a removable pastor against his will to another parish not greatly inferior to his present one. If the pastor refuses, he must give his reasons in writing. If the reasons

## RIGHTS OF PARISH PRIESTS 311

do not satisfy the Ordinary, the advice of two parish priest consultera is sought. If then the reasons still appear insufficient, the Ordinary exhorts the pastor to accept the change. If he refuses, the Ordinary bids him to take the other parish within a fixed time. If the pastor fails to do so, the Ordinary declares the pastor's parish vacant.

In the case of parish priests who are Religious, the bishop can remove them at will and merely notify the religious Superior ; similarly, the Superior need merely notify the bishop of the removal of his subject. Neither is bound to give reasons to the other nor to await the other's consent.

#### SECTION 2. Certain Functions reserved to Parish Priests

The following functions are reserved to a parish priest :

1. The solemn administration of Baptism, as opposed to private Baptism without the solemn ceremonies. A child must be baptized in its own parish church, and, if possible, by the parish priest of its parents even though born away from their domicile (c. 738), and a parish priest may not solemnly baptize even one of his own subjects in the parish of another (c. 739).

2. Publicly to take the Blessed Sacrament to the sick in his own parish, whether the sick are his own parishioners or not. Any priest may do so in urgent necessity, or with presumed permission (c. 848), and any priest may take Holy Communion privately to the sick (c. 849), but with the permission, at least presumed, of that priest to whom the custody of the Blessed Sacrament is committed. Religious Superiors now have the right to administer Viaticum and Extreme Unction to their own subjects (professed and novices) even outside the religious house, but without infringing the right of the parish priest of taking Holy Communion publicly within the limits of his territory, as stated in c. 848.

3. Publicly or privately to take Holy Viaticum to the sick of his parish and to administer Extreme Unction to those in danger of death. A few exceptions are admitted by law, such as administration of Extreme Unction and



Viaticum to bishops, to members of clerical Religious communities, to nuns whose Institute prescribes solemn vows, and to members of lay communities if a Chaplain has been appointed for them by the Ordinary'.

4. The publication of the names of candidates for Sacred Orders, of banns of marriage, assistance at marriages, the bestowal of the nuptial blessing.

5. Funeral rites of deceased parishioners unless the person died far away from his own parish or unless another church was legitimately chosen. If the dead person belonged to more than one parish, the right of burial belongs to the

6. To bless the baptismal font and the houses of his parish on Holy Saturday, to hold public processions outside the church, to give solemn blessings outside the church.

### SECTION 3. The Duties of Parish Priests

1. The duties of a parish priest are derived from his office and therefore from virtual contract and on grounds of justice. His duties regard all his parishioners except those who are by law exempt from his jurisdiction, and those whom the bishop may exempt for a grave reason, if they live in Religious Congregations or pious houses. Such are those living in hospitals or colleges administered by persons who lead a life in common and pursue a charitable or religious purpose.

2. The parish priest is bound to reside in the presbytery near his church, unless the bishop, for a good reason, such as, for example, climate, position, infirmity, allows him to reside elsewhere, but always in a house not so far from the church that his parochial duties would suffer.

The parish priest is allowed by law to be absent from his parish for two months at most in a year ; the months may be continuous or interrupted. The Ordinary may extend or curtail this period. In these two months, the days of an annual spiritual retreat are not included. Absences of some hours only or of half a day now and then are probably not to be included. Absence for more than a week requires

both a legitimate reason and the written permission of the Ordinary ; furthermore, the parish priest must leave a substitute in his place who is to be approved by the Ordinary. In cases when the parish priest is a Religious, leave and approval must be obtained from both the bishop and the religious Superior. Such a substitute obtains full faculties from the bishop, and he could assist at marriages validly and licitly with the approval of the Ordinary. For brief absences of a day or two, the parish priest on a solitary mission should make arrangements with a neighbouring priest to supply in his absence in case of sick calls. When a parish priest is called away suddenly for more than a week, he must notify the Ordinary by letter of the fact, and of the cause of his departure and the name of the substitute. In time of plague, the parish priest is forbidden to be absent ; he may arrange with his curate, if he has one, that one of them shall attend the plague-stricken, whilst the other attends those free from the plague.

3. The parish priest is bound by common law to apply Mass for his flock on certain days of the year.<sup>1</sup>

4. The parish priest must celebrate the divine offices. Holy Mass is one of these and the chief. There is no obligation to celebrate Mass daily, but a zealous priest will do so that some of the faithful may communicate daily. It is not uncommon in clergy retreats for priests to omit Mass on the first day of the retreat ; apart from tacit approval of this practice by the bishop, it appears a fit time to say Mass with more than usual care and devotion. Other services, such as Benediction, *Quarant' Ore*, Vespers, Novenas, processions, should be carried out with the greatest exactness and fervour, and always in accordance with diocesan law and custom. All that suggests superstition or money-making should be banished from the churches. Forms of prayer used in the church need episcopal approbation, and all unbecoming, theatrical music and, not the least, very protracted sung High Mass

<sup>1</sup> The days have been enumerated, and the character of the obligation, and the manner of its fulfilment, explained in a previous chapter, see *supra*, vol. III, p. 106.



and lengthy motets, should be replaced by good simple music and plain chant.

5. Pastors are bound to administer the Sacraments to the faithful when these legitimately and reasonably ask for them. A fixed time for hearing confessions on Saturdays, on the eves of feast days, and before Mass should be arranged and adhered to.

6. The pastor must know his flock and therefore must visit them regularly and should keep a census for reference to be revised at regular intervals. He must prudently admonish those who are remiss without acerbity or pride, making allowances for infirmity and poverty, and even for passion and perversity. He is to be a kind father to the poor and the afflicted, helping them whenever possible, and using for that purpose the kind services of the members of S. Vincent de Paul Conferences, the visiting Sisters and Sodalities when these exist. Special attention should be given to the sick and the dying, who should be visited almost daily, lest any die without the Last Sacraments and the Apostolic blessing. The people, so remiss in sending for the priest betimes, should be reminded frequently of their serious duty of caring for the spiritual needs of their relatives. Instructions on what is needed in a sickroom for the administration of Holy Viaticum should also be given.

7. The parish priest must exercise the greatest diligence in instructing the children in Catholic doctrine. Even if such instruction is fully given in school or by special teachers, an instruction occasionally from the priest is of very great value, either at the children's Mass or on Sunday afternoon. Children quickly realize whether or not the priest takes an interest in them ; if he does, they readily respond, and those are the occasions on which he should speak of daily Holy Communion, vocations to the priesthood or religious life, and the foreign missions. If, in a parish of some hundreds, a vocation never appears, the priest may fear that the Catholic spirit is at a low ebb amongst his people.

8. The faithful are to be reminded to attend frequently, where they can conveniently do so, the services and sermons in their own parish church. The tendency nowadays to

stay away from evening service on Sundays is extensive and pronounced. The priest should, therefore, instruct his people at all the morning Masses, where diocesan custom permits this, and give detailed instructions on Catholic doctrine at the last Mass. But he should not give up all positive efforts at getting the people back to evening service ; his efforts will succeed the more readily if the service is short, and the sermon very practical and to the point.

9. The parish priest must be most vigilant lest any false views on Faith or moral conduct find a way into his parish or into the schools, public or private. These false and pagan views are now widespread in every kind of paper and literature. The pastor will inveigh against bad books and papers and the evil principles enunciated in bad plays.

10. Works of charity, faith and piety are to be inaugurated and fostered in the parish, such as Confraternities, Sodalities, and even secular societies that will promote Catholic solidarity. The parish priest should establish, when urged by the Ordinary, the Confraternities of the Blessed Sacrament and of Christian doctrine ; these become affiliated to the Archconfraternity in Rome (c. 711) and carry many great indulgences.

11. In each parish there are to be parochial registers kept in good order, such as the registers of Baptism, Confirmation, Marriage, Census book and Last Sacrament book. In the baptismal register the records of Confirmation, Marriage (except marriages of conscience, c. 1107), subdiaconate, solemn religious professions, are to be entered, and these details, where they exist, should be written out when a baptismal certificate is issued. It is stated in the canons that an authentic copy of these parochial registers, except the Census book, is to be sent each year to the episcopal Curia. In this country, the bishop examines these registers at his visitation. A parish seal for stamping official documents is to be kept and all the registers, episcopal letters, and such documents as are necessary or useful, are to be carefully preserved in the archives.



## CHAPTER XII

### ASSISTANT PASTORS OR CURATES (c. 476)

#### SECTION 1. Appointment of Curates

The Council of Trent prescribed that the bishop could compel a Rector of a church to accept as many assistants as were necessary for the people. The Rector nominated them for approval. By degrees, the local bishop appointed assistants, but he was recommended to have regard to the wishes of the pastor.<sup>1</sup>

The canons now enjoin the task on the Ordinary of supplying the parish priest with one or more curates, if necessary, and of assigning to them a fitting remuneration for their support. Such curates may be appointed for the whole parish or for a particular part of it. The right of appointing such assistants from the members of the secular clergy belongs to the Ordinary, though he should consult the pastor. The consultation of the pastor appears to be a counsel and the omission of it would not render the appointment invalid, but the Congregation of the Council gave a reply to the Archbishop of Agram, in Croatia, who had invoked a contrary custom of a hundred years, to the effect that the prescription of the *Codex* was to be observed.<sup>2</sup> Even a religious Superior, in presenting for approval one of his subjects to the bishop for a curacy, should first consult the parish priest (c. 476, 4).

Whatever the views held before the issue of the *Codex* in regard to the powers of curates in this country, for it was maintained by many that they had the same powers as the parish priest in respect of dispensations, those views cannot, we think, be now maintained. Curates have as much power as their Ordinary gives them and no more.

\* S.C.C., 1863.

<sup>1</sup>S.C.C., Nov. 14, 192° ; Verm.-Creus., *Epii.*, I, n. 521.



## SECTION 2. Obligations of Curates

1.The curate is bound to residence in the parish in accordance with diocesan statutes, custom, or precept of the bishop. Indeed, the bishop is prudently to urge residence in the presbytery of the parish. The Second Synod of Westminster prescribed that assistant priests should not be absent from home even for a day without notifying the Rector, nor on a holy day of obligation without leave of the bishop, except in case of urgency. The Fourth Synod urged presence at the common table in the presbytery as a mark of brotherly charity.

2.The duties and obligations of curates are to be gathered from diocesan statutes and the commission of then-parish priest. Curates must take the place of the parish priest when absent, and help him in all parochial duties, except the application of Mass for the people. Other provisions may be expressly made, of course, to delimit the duties of the curates.

3.Curates have delegated jurisdiction for confessions. They may receive from the Ordinary or the parish priest general power to assist at all marriages in the parish, and may subdelegate it for particular cases.<sup>1</sup> But their power is delegated and is not derived from their office. Curates usually receive general power of administering the Sacraments, preaching and performing ordinary parochial functions, and they may subdelegate others for particular cases and with due submission to the parish priest. They cannot, of course, give faculties for hearing confessions, nor can the parish priest do so. This power is reserved to the Ordinary.

4.The curate is subject to the parish priest, who is to instruct and direct him in the care of souls in a truly paternal manner, to watch over him and send a report on him annually to the Ordinary. The difficulties of common life, especially when the same few priests are living for years in the same presbytery, should not be minimized. There is

<sup>1</sup> P.C.C.J. on c. 1096, Dec., 1927.

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the greater need for charity and forbearance, especially on the part of the one in authority. But young and old have not many interests in common nowadays. The curate fresh from the seminary may be imprudent in his zeal, or contrariwise, may be tempted to abuse his newly-found freedom by seeking all his recreation outside the presbytery. He will probably be flattered by people of the world and made welcome at tables, both for meals and for card-playing. A parish priest has a serious obligation of putting a check to any abuses that may creep into the life of a curate, such as very late hours in returning home and too great addiction to drink, card-playing, golf and motoring.

5. The curate who wishes to live up to the sanctity of his high calling will avoid the tables of the rich, the conversation of women, more than a restricted amount of outdoor games and motoring ; indeed, if he could cut them out of his life altogether, he would be more likely to become the saintly priest, and the more certainly save his people. Some words of Pope Leo XIII on the Priestly Life (*Encyclical letter*, 1899) are as pertinent in these days as they were when written. We record here a few sentences that endorse what has been said above :

“ Remember that the indispensable condition of true priestly zeal and the surest guarantee of success in the good works to which hierarchical obedience consecrates you is purity and holiness of life. Jesus began to do before He began to teach. The prelude to preaching is good example.....

“ ‘ Clerics,’ said the Fathers of the Council of Trent, ‘ cut off from the world and its affairs, are placed on a height where they are exposed to view, and the faithful look upon their lives as upon a mirror wherein they may learn what they ought to imitate ... In their mode of living, their movements, their steps, their words and all other details of their lives, there should appear nothing but what is grave, modest and deeply impressed with religion. They will avoid with care those faults which, light in others, would be very grave in them, so that there be not one of their actions which does not inspire respect in all.’ ”

The Pope then warns priests against forgetfulness of their



exalted dignity. “ So the priest,” His Holiness wrote, “ the salt of the earth, in the necessary contact with the society that surrounds him, ought to preserve modesty, gravity, and holiness in his mien, his actions and his words, and not allow himself to yield to the levity, dissipation and vanity of men of the world. It is necessary, on the contrary, that in the midst of men he preserve his soul united with God, that he lose nothing of the spirit of his holy state, and is not constrained to make before God and his conscience the sad and humiliating confession : ‘ As often as I have been abroad among laymen, I have returned home less a priest? ’ ”

Continual, solid and deep study of present day problems is inculcated by Pope Leo XIII : “ To the priest it belongs to oppose himself as a barrier to the encroachments of error and disguised heresy ; to watch the doings of the abettors of impiety ; ... to unmask their deceits and point out their ambushes ; to caution the simple, to give courage to the timid, to open the eyes of the blind. A superficial learning, an ordinary knowledge, is not sufficient for this ; solid, deep, and concentrated study is necessary. In a word, there must be an ample store of doctrinal knowledge to wrestle successfully with the subtlety and singular craftiness of our modern opponents.”<sup>1</sup>

#### Note

For the rights and duties of Chaplains of the Forces and Missionaries of Emigrants see Appendix V.

<sup>1</sup> Encyclical letter to the Archbishops, Bishops and Clergy of France, 1899.

## APPENDIX 1

### Catechetical Instruction

A decree<sup>1</sup> lays down rules which apply to parish priests.

1. In every parish a Confraternity of Christian Doctrine is to be established, the members of which are especially masters and mistresses of school children.

2. In every parish, parochial catechetical schools are to be established, over which the parish priest is to preside, and children and young people are to be taught the rudiments of the divine law and the faith.

(a) Parish priests are not to admit children to the Sacraments of Penance and Confirmation unless they have acquired a fitting catechetical training, and after their first Holy Communion they must be instructed in the catechism more fully and fruitfully.

(b) Parish priests as well as preachers, confessors and Rectors of churches, must remind parents of their grave obligation to have their children taught the catechism.

(i) Parish priests should most seriously endeavour to induce children to come willingly to the catechism class, and do so, for example, by having a Mass for children on holy days of obligation, by competitions in the catechism, offering prizes and other moderate and befitting enticements to the children.

(d) At the time of the bishop's visitation, the children should be presented to the bishop to give an exhibition of their knowledge of the catechism.

3. The parish priest is to instruct his people on Sundays and holy days of obligation in the catechism. To this end, Pope Pius X wished that the catechism of the Council of Trent should be used as a source, so that in four or five years a complete course should be given in the Creed, the Sacraments, the Commandments of God, prayer, the Precepts of the Church, the Evangelical Counsels, grace, the virtues, sin and the Four Last Things.

<sup>1</sup> S.C.G., Jan. 12, 1935.



## APPENDIX 2

### Pope Pius XI on the Priesthood<sup>1</sup>

14

#### The Powers of the Priest

##### 1. The Priesthood supplies a human need

The human race has always felt the need of a priesthood ; of men, that is, who have the official charge to be mediators between God and humanity, men who should consecrate themselves entirely to this mediation, as to the very purpose of their lives, men set aside to offer to God public prayers and sacrifices in the name of human society. For human society as such is bound to offer to God public and social worship. It is bound to acknowledge in Him its supreme Lord and first beginning, and to strive toward Him, as to its last end, to give Him thanks and offer Him propitiation. In fact, priests are to be found among all peoples whose customs are known, except those compelled by violence to act against the most sacred laws of human nature. They may, indeed, be in the service of false divinities ; but wherever religion is professed, wherever altars are built, there also is a priesthood surrounded by particular marks of honour and veneration.

The priest, according to the magnificent definition given by S. Paul, is indeed a man *Ex hominibus assumptus*, “ taken from amongst men,” yet *pro hominibus constituitur in his quae sunt ad Deum*, “ ordained for men in the things that appertain to God : ” his office is not for human things, and things that pass away, however lofty and valuable these may seem ; but for things divine and enduring. These eternal things may, perhaps, through ignorance, be scorned and contemned or even attacked with diabolical fury and malice, as sad

<sup>1</sup> The reader is urged to study the whole of the Encyclical Letter, *Ad Catholicum Sacerdotium*, of Pope Pius XI, issued on December 20, 1935. A summary cannot do adequate justice to the original. Cf. also Pope Pius XII, *Menti Nostrae*, Sept 23, 1950; A.A.S., 1950, pp. 657-704, and a translation into English in I.E.R., July, 1951.

experience has often proved, and proves even to-day ; but they always continue to hold the first place in the aspirations, individual and social, of humanity, because the human heart feels irresistibly it is made for God and is restless till it rests in Him.

## 2. The Priest under the New Law

The Apostle of the gentiles thus perfectly sums up what may be said of the greatness, the dignity, and the duty of the Christian priesthood : *Sic nos existimet homo ut ministros Christi et dispensatores mysteriorum Dei* : “ Let a man so account of us as of the ministers of Christ and the dispensers of the mysteries of God.” The priest is the minister of Christ, an instrument, that is to say, in the hands of the Divine Redeemer. He continues the work of the redemption in all its world-embracing universality and divine efficacy, that work that wrought so marvellous a transformation in the world. Thus the priest, as is said with good reason, is indeed “ another Christ ” ; for, in some way, he is himself a continuation of Christ. “ As the Father hath sent Me, I also send you,” is spoken to the priest, and hence the priest, like Christ, continues to give “ Glory to God in the highest ; and on earth peace to men of good will.” For, in the first place, as the Council of Trent teaches, Jesus Christ at the last Supper instituted the sacrifice and the priesthood of the New Covenant : “ Our Lord and God, although once and for all, by means of His death on the altar of the cross, He was to offer Himself to God the Father, that thereon He might accomplish eternal redemption ; yet, because death was not to put an end to His priesthood, at the Last Supper, the same night in which He was betrayed, in order to leave to His beloved spouse the Church a sacrifice which should be visible (as the nature of man requires), which should represent that bloody sacrifice, once and for all to be completed on the cross, which should perpetuate His memory to the end of time, and which should apply its saving power unto the remission of the sins we daily commit, showing Himself made a priest for ever according to the order of Melchisedech, offered to God the Father, under the appear-



ance of bread and wine, His body and blood, giving them to the Apostles (whom He was then making priests of the New Covenant) to be consumed under the signs of these same things, and commanded the Apostles and their successors in the priesthood to offer them, by the words, ‘ Do this in commemoration of me.’ ”

And thenceforth, the Apostles, and their successors in the priesthood, began to lift to heaven that “ clean oblation ” foretold by Malachy, through which the name of God is great among the gentiles. And now, that same oblation, in every part of the world and at every hour of the day and night, is offered and will continue to be offered without interruption till the end of time ; a true sacrificial act, not merely symbolical, which has a real efficacy unto the reconciliation of sinners with the Divine Majesty :

“ Appeased by this oblation, the Lord grants grace and the gift of repentance, and forgives iniquities and sins, however great.” The reason of this is given by the same Council in these words : “ For there is one and the same host, there is present the same Christ who once offered Himself upon the Cross, who now offers Himself by the ministry’ of priests, only the manner of the offering being different.”

And thus the ineffable greatness of the human priest stands forth in all its splendour ; for he has power over the very body of Jesus Christ, and makes it present upon our altars. In the name of Christ Himself he offers it a victim infinitely pleasing to the Divine Majesty. “ Wondrous things are these,” justly exclaims S. John Chrysostom, “ so wonderful, they surpass wonder.”

### 3. The Priest and the Mystical Body

Besides this power over the real Body of Christ, the priest has received other powers, august and sublime, over His mystical body. There is no need to enlarge upon the beautiful doctrine of the mystical body of Christ, a doctrine so dear to S. Paul ; this beautiful doctrine that shows us the Person of the Word made flesh in union with all His brethren. For from Him to them comes a supernatural

influence, so that they, with Him as Head, form a single body of which they are the members. Now a priest is the appointed “ dispenser of the mysteries of God ” for the benefit of the members of the mystical body of Christ ; since he is the ordinary minister of nearly all the Sacraments—those channels through which the grace of the Saviour flows for the good of humanity. The Christian, at almost every important stage of his mortal career, finds at his side the priest with power received from God, in the act of communicating or increasing that grace which is the supernatural life of his soul. Thus, from the cradle to the grave the priest is ever beside the faithful, a guide, a solace, a minister of salvation and dispenser of grace and blessing.

#### 4. The Priest and the Ministry of Reconciliation

But among all these powers of the priest over the mystical body of Christ for the benefit of the faithful, there is one of which the simple mention made above will not content Us. This is that power which, as S. John Chrysostom says : “ God gave neither to Angels nor Archangels ”—the power to remit sins. “ Whose sins you shall forgive they are forgiven them : and whose sins you shall retain they are retained ; ” a tremendous power, so peculiar to God that even human pride could not make the mind conceive that it could be given to man. “ Who can forgive sins but God alone ? ” And, when we see it exercised by a mere man there is reason to ask ourselves, not, indeed, with pharisaical scandal, but with reverent surprise at such a dignity : “ Who is this that forgiveth sins also ? ” But it is so : the God-Man who possessed the “ power on earth to forgive sins ” willed to hand it on to His priests, so as to supply, in His divine generosity and mercy, the need of making reparation which troubles every heart. What a comfort to the guilty, when, stung with remorse and repenting of his sins, he hears the word of the priest who says to him, in God’s name : “ I absolve thee from thy sins ! ” These words fall, it is true, from the lips of one who, in his turn, must needs beg the same absolution from another priest. This does not debase the merciful gift ; but makes it, rather, appear



greater ; since beyond the weak creature is seen more clearly the hand of God through whose power is wrought this wonder.

#### 5. The Permanence of Holy Orders

These august powers are conferred upon the priest in a special Sacrament designed to this end : they are not merely passing or temporary in the priest, but are stable and perpetual, united as they are with the indelible character imprinted on his soul whereby he becomes “ a priest forever ; ” whereby he becomes like unto Him in whose eternal priesthood he has been made a sharer. Even if through human frailty he loses both faith and virtue, he can never blot out from his soul the priestly character. But along with this character and these powers, the priest through the Sacrament of Orders receives new and special grace with special helps. Thereby, if only he will loyally further, by his free and personal co-operation, the divinely powerful action of the grace itself, he will be able worthily to fulfil all the duties, however arduous, of his lofty calling. He will not be overborne, but will be able to bear the tremendous responsibilities inherent in his priestly duty ; responsibilities which have made fearful even the stoutest champions of the Christian priesthood, men like S. John Chrysostom, S. Ambrose, S. Gregory the Great, S. Charles, and many others.

#### 6. The Priest and the Ministry of Preaching

The Catholic priest is minister of Christ and dispenser of the mysteries of God in another way, that is, by his words. The “ ministry of the word ” is a right which is inalienable ; it is a duty which cannot be disallowed ; for it is imposed by Jesus Christ Himself : “ Going, therefore, teach ye all nations . . . teaching them to observe all tilings whatsoever I have commanded you.” The Church of Christ, depository and infallible guardian of divine revelation, by means of her priests, pours out the treasures of heavenly truth ; she preaches Him who is “ the true Light which enlighteneth



every' man that cometh into this world ; ” she sows with divine bounty that seed which is small and worthless to the profane eyes of the world, but which is like the mustard seed of the Gospel. For it has within itself power to strike strong deep roots in souls which are sincere and thirsting for the truth, and make them like sturdy trees able to withstand the wildest storms.

#### 7. The Priest the Light of the World

Amidst all the aberrations of human thought, infatuated by a false emancipation from every law and curb, and amidst the awful corruptions of human malice, the Church rises up Eke a bright lighthouse, warning by the clearness of its beam every deviation to right or left from the way of truth, and pointing out to one and all the right course that they should follow. Woe if ever this beacon should be— We do not say extinguished, for that is impossible owing to the unfailing promises on which it is founded—but if it should be hindered from shedding far and wide its beneficent light ! We see already with our own eyes whither the world has been brought by its arrogant rejection of divine revelation, and its pursuit of false philosophical and moral theories that bear the specious name of “ science.” That it has not fallen still lower down the slope of error and vice is due to the guidance of the light of Christian truth that always shines in the world. Now the Church exercises her “ ministry of the word ” through her priests of every grade of the hierarchy, in which each has his wisely allotted place. These she sends everywhere as unwearied heralds of the good tidings which alone can save and advance true civilization and culture, or help them to rise again. The word of the priest enters the soul and brings light and power ; the voice of the priest rises calmly above the storms of passion, fearlessly to proclaim the truth, and exhort to the good : that truth which elucidates and solves the gravest problems of human life ; that good which no misfortune can take from us, which death but secures and renders immortal.

#### 8. The Priest the Salt of the Earth

Consider the truths themselves which the priest, if faithful to his ministry, must frequently inculcate. Ponder them one by one and dwell upon their inner power ; for they make plain the influence of the priest, and how strong and beneficent it can be for the moral education, social concord, and peaceful development of peoples. He brings home to young and old the fleeting nature of the present life ; the perishableness of earthly goods ; the value of spiritual goods and of the immortal soul ; the severity of divine judgment : the spotless holiness of the divine gaze that reads the hearts of all ; the justice of God which “ will render to every man according to his works.” These and similar lessons the priest teaches ; a teaching fitted indeed to moderate the feverish search for pleasure and the uncontrolled greed for worldly goods, that debase so much of modern life, and spur on the different classes of society to fight one another like enemies, instead of helping one another like friends. In this clash of selfish interest, and unleashed hate, and dark plans of revenge, nothing could be better or more powerful to heal, than loudly to proclaim the “ new commandment ” of Christ. That commandment enjoins a love which extends to all, knows no barriers nor national boundaries, excludes no race, excepts not even its own enemies.

The experience of twenty centuries fully and gloriously reveals the power for good of the word of the priest. Being the faithful echo and re-echo of the “ word of God,” which “ is living and effectual and more piercing than any two-edged sword,” it too reaches “ unto the division of the soul and the spirit ; ” it awakens heroism of every kind, in every class and place, and inspires the self-forgetting deeds of the most generous hearts. All the good that Christian civilization has brought into the world is due, at least radically, to the word and works of the Catholic priesthood. Such a past might, of itself, serve as sufficient guarantee for the future ; but we have a still more secure guarantee “ a more firm prophetic word ” in the infallible promises of Christ.

The work, too, of the Missions manifests most vividly



the power of expansion given by divine grace to the Church. This work is advanced and carried on principally by priests. Pioneers of faith and love, at the cost of innumerable sacrifices, they extend and widen the Kingdom of God upon Earth.

#### 9. The Priest and the Work of Intercession

Finally, the priest, in another way, follows the example of Christ. Of Him it is written that He “ passed the whole night in the prayer of God ” and “ ever lives to make intercession for us ; ” and, like Him, the priest is public and official intercessor of humanity before God ; he has the duty and commission of offering to God in the name of the Church, over and above sacrifice strictly so called, the “ sacrifice of praise,” in public and official prayer ; for several times each day, with psalms, prayers and hymns taken in great part from the inspired books, he pays to God this dutiful tribute of adoration and thus performs his necessary office of interceding for humanity. And never did humanity, in its afflictions, stand more in need of intercession and of the divine help which it brings. Who can tell how many chastisements priestly prayer wards off from sinful mankind, how many blessings it brings down and secures ? If Our Lord made such magnificent and solemn promises even to private prayers, how much more powerful must be that prayer which is said *ex officio* in the name of the Church, the beloved Spouse of the Saviour ?

A last tribute to the priesthood is given by the enemies of the Church. For as We have said on a previous page, they show that they fully appreciate the dignity and importance of the Catholic priesthood, by directing against it their first and fiercest blows ; since they know well how close is the tie that binds the Church to her priests. The most rabid enemies of the Catholic priesthood are to-day the very enemies of God ; a homage indeed to the priesthood, showing it the more worthy of honour and veneration.

## II

### The Priestly Character

#### 1. Personal Holiness

Most sublime, then, is the dignity of the priesthood. Even the falling away of the few unworthy in the priesthood, however deplorable and distressing it may be, cannot dim the splendour of so lofty a dignity. Much less can the unworthiness of a few cause the worth and merit of so many to be overlooked ; and how many have been, and are, in the priesthood, pre-eminent in holiness, in learning, in works of zeal, nay, even in martyrdom.

Nor must it be forgotten that personal unworthiness does not hinder the efficacy of a priest's ministry. For the unworthiness of the minister does not make void the Sacraments he administers ; since the Sacraments derive their efficacy from the Blood of Christ, independently of the sanctity of the instrument, or, as scholastic language expresses it, the Sacraments work their effect *ex opere operato*.

Nevertheless, it is quite true that so holy an office demands holiness in him who holds it. A priest should have a loftiness of spirit, a purity of heart, and a sanctity of life befitting the solemnity and holiness of the office he holds. For this, as We have said, makes the priest a mediator between God and man ; a mediator in the place, and by the command of Him who is the “ one mediator of God and men, the man Christ Jesus.” The priest must, therefore, approach as close as possible to the perfection of Him whose vicar he is and render himself ever more and more pleasing to God, by the sanctity of his life and of his deeds ; because more than the scent of incense, or the beauty of churches and altars, God loves and accepts holiness. “ They who are the intermediaries between God and His people,” says S. Thomas, “ must bear a good conscience before God, and a good name among men.” On the contrary, whosoever handles and administers holy things, while blameworthy in his life, profanes them and is guilty of sacrilege : “ They who are not holy ought not to handle holy things.”



33°

## 2. Priests other Christs

And surely every' reason We have urged in showing the dignity of the Catholic priesthood does but reinforce its obligation of singular holiness ; for as the Angelic Doctor teaches : “ To fulfil the duties of holy Orders, common goodness does not suffice ; but excelling goodness is required ; that they who receive Orders and are thereby higher in rank than the people may also be higher in holiness.” The Eucharistic Sacrifice in which the Immaculate Victim who taketh away the sins of the world is immolated, requires in a special way that the priest, by a holy and spotless life, should make himself, as far as he can, less unworthy of God, to whom he daily offers that adorable Victim, the very Word of God incarnate for love of us. *Agnosce quod agitis, imitamini quod tractatis*, “ realise what you are doing, and imitate what you handle,” says the Church through the Bishop to the Deacons as they are about to be consecrated priests. The priest is also the almoner of God's graces of which the sacraments are the channels ; how grave a reproach would it be, for one who dispenses these most precious graces, were he himself without them, or were he even to esteem them lightly and guard them with little care. Moreover, the priest must teach the truths of faith ; but the truths of religion are never so worthily and effectively taught as when taught by virtue ; because, in the common saying : “ Deeds speak louder than words.” The priest must preach the law of the Gospel ; but for that preaching to be effective, the most obvious and, by the grace of God, the most persuasive argument, is to see the actual practice of the law in him who preaches it. S. Gregory the Great gives the reason : “ The voice which penetrates the hearts of the hearers, is the voice commended by the speaker's own life ; because what his word enjoins, his example helps to bring about.” This exactly is what Holy Scripture says of our Divine Saviour : He “ began to do and to teach.” And the crowds hailed Him, not so much because “ never did man speak like this man,” but rather because “ he hath done all things well.” On the



other hand, they who “say and do not,” practising not what they preach, become like the Scribes and Pharisees. And Our Lord’s rebuke to the Scribes and Pharisees, though it saved their legitimate authority to preach the word of God, was yet administered publicly, in the presence of the listening crowd : “The Scribes and Pharisees have sitten on the chair of Moses. All things therefore whatsoever they shall say to you observe and do : but according to their works do ye not.” A preacher who does not try to ratify by his life’s example the truth he preaches, only pulls down with one hand what he builds up with the other. On the contrary, God greatly blesses the labours of those heralds of the Gospel who attend first to their own holiness ; they see their apostolate flourishing and fruitful, and in the day of the harvest, “coming they shall come with joyfulness, carrying in their sheaves.”

### 3. The Danger of External Works

It would be a grave error fraught with many dangers should the priest, carried away by false zeal, neglect his own sanctification, and become over immersed in the external works, however holy, of the priestly ministry. Thereby, he would run a double risk. In the first place he endangers his own eternal salvation, as the great Apostle of the Gentiles feared for himself : “But I chastise my body, and bring it into subjection : lest perhaps, when I have preached to others, I myself should become a cast-away.” In the second place he might lose, if not divine grace, certainly that unction of the Holy Spirit which gives such a marvellous force and efficacy to the external apostolate.

Now to all Christians in general it has been said : “Be ye perfect as your Heavenly Father is perfect ;” how much more then should the priest consider these words of the Divine Master as spoken to himself, called as he is by a special vocation to follow Christ more closely. Hence the Church publicly urges on all her clerics this most grave duty, placing it in the Code of her laws : “Clerics must lead a life, both interior and exterior, more holy than the

laity, and be an example to them by excelling in virtue and good works,” and since the priest is an ambassador for Christ, he should so live as to be able with truth to make his own the words of the Apostle : “Be ye followers of me, as I also am of Christ ;” he ought to live as another Christ, who by the splendour of His virtue enlightened and still enlightens the world.

#### **4. Solid Piety**

It is plain, then, that all Christian virtues should flourish in the soul of the priest. Yet there are some virtues which in a very particular manner attach themselves to the priest as most befitting and necessary to him. Of these the first is piety, or godliness, according to the exhortation of the Apostle to his beloved Timothy : *Exerce . . . te ipsum ad pietatem*, “exercise thyself unto godliness.” Indeed the priest’s relations with God are so intimate, so delicate and so frequent, that clearly they should ever be graced by the sweet odour of piety ; if “Godliness is profitable to all things,” it is especially profitable to a right exercise of the priestly charge. Without piety the holiest practices, the most solemn rites of the sacred ministry, will be performed mechanically and out of habit ; they will be devoid of spirit, unction, and life. But the piety of which We speak is not that shallow and superficial piety which attracts but does not nourish, is busy but does not sanctify. We mean that solid piety which is not dependent upon changing mood or feeling. It is based upon principles of sound doctrine ; it is ruled by staunch convictions ; and so it resists the assaults and the illusions of temptation. This piety should primarily be directed towards God our Father in Heaven ; yet it should be extended also to the Mother of God. The priest even more than the faithful should have devotion to Our Lady, for the relation of the priest to Christ is more deeply and truly like that which Mary bears to her divine Son.

#### **5. The Virtue of Chastity**

It is impossible to treat of the piety of a Catholic priest without being drawn on to speak too of another most



precious treasure of the Catholic priesthood, that is, of chastity ; for from piety springs the meaning and the beauty of chastity. Clerics of the Latin Church in higher Orders are bound by a grave obligation of chastity ; so grave is the obligation in them of its perfect and total observance that a transgression involves the added guilt of sacrilege.

Though this law does not bind, in all its amplitude, clerics of the Oriental Churches, yet among them also, ecclesiastical celibacy is revered ; indeed, in some cases, especially in the higher orders of the Hierarchy, it is a necessary and prescribed requisite.

A certain connection between this virtue and the sacerdotal ministry can be seen even by the light of reason alone : since “ God is a Spirit,” it is only fitting that he who dedicates and consecrates himself to God’s service should in some way “ divest himself of the body.”

The very height, or, to use S. Epiphanius’ phrase, “ the incredible honour and dignity ” of the Christian priesthood, which We have briefly described, shows how becoming is clerical celibacy and the law which enjoins it. Priests have a duty which, in a certain way, is higher than that of the most pure spirits, “ Who stand before the Lord.” Is it not right, then, that he live an all but angelic life ? A priest is one who should be totally dedicated to the things of the Lord. Is it not right, then, that he be entirely detached from the things of the world, and have his conversation in Heaven ? A priest’s charge is to be solicitous for the eternal salvation of souls, continuing in their regard the work of the Redeemer. Is it not, then, fitting that he keep himself free from the cares of a family, which would absorb a great part of his energies ?

## 6. Detachment from Worldly Goods

Not less than by his chastity, the Catholic priest ought to be distinguished by his detachment. Surrounded by the corruptions of a world in which everything can be bought and sold, he must pass through them utterly free of selfishness. He must holily spurn all vile greed of earthly gains, since

he is in search of souls, not of money, of the glory of God, not his own. He is no mercenary working for a temporal recompense, nor yet an employee who, whilst attending conscientiously to duties of his office, at the same time is looking to his career and personal promotion ; he is the “ good soldier of Christ ” who “ entangleth not himself with secular business : that he may please him to whom he hath engaged himself.” The minister of God is a father of souls ; and he knows that his toils and his cares cannot adequately be repaid with wealth and honours of earth. He is not indeed forbidden to receive fitting sustenance, according to the teaching of the Apostle : “ They that serve the altar may partake with the altar . . . so also the Lord ordained that they who preach the Gospel should live by the Gospel.” But once “ called to the inheritance of the Lord,” as his very title “ cleric ” declares, a priest must expect no other recompense than that promised by Christ to His Apostles : “ Your reward is very great in Heaven.” Woe to the priest who, forgetful of these divine promises, should become “ greedy of filthy lucre.” Woe if he join the herd of the worldly over whom the Church like the Apostle grieves : “ All seek the things that are their own : not the things that are Jesus Christ’s.” Such a priest, besides failing in his vocation, would earn the contempt even of his own people. They would perceive in him the deplorable contradiction between his conduct and the doctrine, so clearly expounded by Christ, which the priest is bound to teach : “ Lay not up to yourselves treasures on earth : where the rust and moth consume and where thieves break through and steal. But lay up to yourselves treasures in Heaven.” Judas, an Apostle of Christ, “ one of the twelve,” as the Evangelists sadly observe, was led down to the abyss of iniquity precisely through the spirit of greed for earthly things. Remembering him, it is easy to grasp how this same spirit could have brought such harm upon the Church throughout the centuries : greed, called by the Holy Spirit the “ root of all evil,” can incite to any crime ; and a priest who is poisoned by this vice, even though he stop short of crime, will nevertheless, consciously or unconsciously, make



common cause with the enemies of God and of the Church, and co-operate in their evil designs.

On the other hand, by sincere disinterestedness the priest can hope to win the hearts of all. For detachment from earthly goods, if inspired by lively faith, is always accompanied by tender compassion towards the unfortunate of every kind. Thus the priest becomes a veritable father of the poor. Mindful of the touching words of his Saviour, "As long as you did to one of these my least brethren, you did it to me," he sees in them, and, with particular affection, venerates and loves Jesus Christ Himself.

#### 7. Zeal for Souls

Thus the Catholic priest is freed from the bonds of a family and of self-interest—the two chief bonds which could bind him too closely to earth. Thus freed, his heart will more readily take flame from that heavenly fire that burns in the Heart of Jesus ; that fire that seeks only to enflame apostolic hearts and through them "cast fire on all the earth." This is the fire of zeal. Like the zeal of Jesus described in Holy Scripture, the zeal of the priest for the glory of God and the salvation of souls ought to consume him. It should make him forget himself and all earthly things. It should powerfully urge him to dedicate himself utterly to his sublime work, and to search out means ever more effective for an apostolate ever wider and ever better.

The Good Shepherd said : "And other sheep I have that are not of this fold ; them also I must bring ;" and again, "See the countries for they are white already to the harvest." How can a priest meditate upon these words and not feel his heart enkindled with yearning to lead souls to the Heart of the Good Shepherd ? How can he fail to offer himself to the Lord of the harvest for unremitting toil ? Our Lord saw the multitudes "lying like sheep that have no shepherd." Such multitudes are to be seen to-day not only in the far distant lands of the Missions, but also, alas ! in countries which have been Christian for centuries. How can a priest see such multitudes and not feel deeply within himself an echo of that divine pity which so often



moved the Heart of the Son of God ?—a priest, We say, who is conscious of possessing the words of life and of having in his hands the God-given means of regeneration and salvation ? But thanks be to God, it is just this flame of apostolic zeal which is one of the brightest jewels in the crown of the Catholic priesthood. Our heart fills with fatherly consolation at the sight of Our Brothers and Our beloved Sons, Bishops and Priests, who Eke chosen troops ever prompt to the call of their chief hasten to all outposts of this vast field. There they engage in the peaceful but bitter warfare of truth against error, of fight against darkness, of the Kingdom of God against the kingdom of Satan.

#### 8. Obedience to Authority

But, by its very nature as an active and courageous company, the Catholic priesthood must have the spirit of discipline, or, to use a more deeply Christian word, obedience. It is obedience which binds together all ranks into the harmony of the Church's Hierarchy.

The Bishop, in his admonition to the ordinands, says : “ With a certain wonderful variety Holy Church is clothed, made cMnely and is ruled ; since in her some are consecrated Pontiffs, and others priests of lesser degree, and from many members of differing dignity there is formed one body of Christ.” This obedience priests promised to the Bishop after Ordination, the holy oil still fresh on their hands. On the day of his consecration the Bishop, in his turn, swore obedience to the supreme visible Head of the Church, the successor of S. Peter, the Vicar of Jesus Christ. Let then obedience bind ever closer together these various members of the Hierarchy, one with another, and all with the Head ; and thus make the Church Militant a foe truly terrible to the enemies of God, *ut castrorum aciem ordinatam*, “ as an army set in array.” Let obedience temper excessive zeal on the one hand, and put the spur to weakness and slackness on the other. Let it assign to each his place and station. These each should accept without resistance ; for otherwise the magnificent work of the Church in the world would be sadly hindered. Let each one see in the arrange-

ments of his hierarchical Superiors the arrangements of the only true Head, whom all obey : Jesus Christ our Lord, who became for us “ obedient unto death, even to the death of the cross . . .” The divine High Priest wished us to have abundant witness to his own most perfect obedience to the Eternal Father ; for this reason both the Prophecies and the Gospels often testify to the entire submission of the Son of God to the will of the Father. “ When he cometh into the world he saith ; sacrifice and oblation thou wouldst not : but a body thou hast fitted to me . . . Then said I : Behold I come. In the head of the book it is written of me that I should do thy will, O God . . .” “ My meat is to do the will of him that sent me.” On His very cross He consecrated obedience. He did not wish to commit His soul into the hands of His Father before having declared that all was fulfilled in Him that the Sacred Scriptures had foretold ; He had accomplished the entire charge entrusted to Him by the Father, even to the last deeply mysterious “ I thirst,” which He pronounced “ that the Scripture might be fulfilled.” By these words He wished to show that zeal even the most ardent ought always to be completely subjected to the will of the Father ; that our zeal should always be controlled by obedience to those who, for us, have the place of the Father, and convey to us His will, in other words our lawful Superiors in the Hierarchy.

#### 9. Knowledge of the Faith

But the portrait of the Catholic priest which We intend to exhibit to the world would be unfinished were We to omit another most important feature—learning. This the Church requires of him ; for the Catholic priest is set up as a “ Master in Israel ;” he has received from Jesus Christ the office and commission of teaching truth : “ Teach . . . all nations.” He must teach the truth that heals and saves ; and because of this teaching, like the Apostle of the Gentiles, he has a duty towards “ the learned and the unlearned.” But how can he teach unless he himself possess knowledge ? “ The lips of the priest shall keep knowledge and they shall seek the law at his mouth,” saith the Holy Spirit in the



Prophecy of Malachy. Who could ever utter a word in praise of sacerdotal learning more weighty than that which divine Wisdom itself once spoke by the mouth of Osee : “ Because thou hast rejected knowledge, I will reject thee that thou shalt not do the office of priesthood to Me.” ? The priest should have full grasp of the Catholic teaching on faith and morals ; he should know how to present it to others ; and he should be able to give the reasons for the dogmas, law's, and observances of the Church of which he is minister. Profane sciences have indeed made much progress ; but in religious questions there is much ignorance still darkening the mind of our contemporaries. This ignorance the priest must dispel. Never was more pointed than to-day the warning of Tertullian *Hoc unum gestit interdum (veritas), ne ignorata damnetur*, “ This alone truth sometimes craves, that it be not condemned unheard.” It is the priest's task to clear away from men's minds the mass of prejudices and misunderstandings which hostile adversaries have piled up ; the modern mind is eager for the truth, and the priest should be able to point it out with serene frankness ; there are souls still hesitating, distressed by doubts, and the priest should inspire courage and trust, and guide them with calm security to the safe port of faith, faith accepted by both head and heart ; error makes its onslaughts, arrogant and persistent, and the priest should know how to meet them with a defence vigorous and active, yet solid and unruffled.

#### 10. Skill in profane learning

Therefore, Venerable Brethren, it is necessary that the priest, even among the absorbing tasks of his charge, and ever with a view to it, should continue his theological studies with unremitting zeal. The knowledge acquired at the seminary is indeed a sufficient foundation with which to begin ; but it must be grasped more thoroughly, and perfected by an ever-increasing knowledge and understanding of the sacred sciences. Herein is the source of effective preaching and of influence over the souls of others. Yet even more is required. The dignity of the office he holds,

and the maintenance of a becoming respect and esteem among the people, which helps so much in his pastoral work, demand more than purely ecclesiastical learning. The priest must be graced by no less knowledge and culture than is usual among well-bred and well-educated people of his day. This is to say that he must be healthily modern, as is the Church, which is at home in all times and all places, and adapts itself to all ; which blesses and furthers all healthy initiative and has no fear of the progress, even the most daring progress, of science, if only it be true science. Indeed, in all ages the Catholic clergy has distinguished itself in every field of human knowledge ; in fact, in certain centuries it so took the lead in the field of learning that the word “ cleric ” became synonymous with “ learned.” The Church preserved and saved the treasures of ancient culture, which without her and her monasteries would have been almost entirely lost ; and her most illustrious Doctors show that all human knowledge can help to throw light upon and to defend the Catholic faith.

To-day it could hardly be hoped that the clergy could hold a similar primacy in every branch of knowledge ; the range of human science has become so vast that no man can comprehend it all, much less become distinguished in each of its numberless branches. Nevertheless wise encouragement and help should be given to those members of the clergy, who, by taste and special gifts, feel a call to devote themselves to study and research, in this or that branch of science, in this or that art ; they do not thereby deny their clerical profession ; for all this, undertaken within just limits and under the guidance of the Church, redounds to the good estate of the Church and to the glory of her divine Head, Jesus Christ. And among the rest of the clergy, none should remain content with a standard of learning and culture which sufficed, perhaps, in other times ; they must try to attain—or, rather, they must actually attain—a higher standard of general education and of learning. It must be broader and more complete ; and it must correspond to the generally higher level and wider scope of modern education as compared with the past.



#### 11. Holiness to be preferred to Learning

Sometimes, it is true, and even in modern times, Our Lord makes the world, as it were, His plaything ; for He has been pleased to elect to the priestly state men almost devoid of that learning of which We have been speaking ; and through them He has worked wonders. But He did this that all might learn, if there be a choice, to prize holiness more than learning ; not to place more trust in human than in divine means. He did this because the world has need, from time to time, to hear repeated that wholesome practical lesson : “ The foolish things of the world hath God chosen to confound the wise . . . that no flesh should glory in His sight.”

In the natural order, divine miracles suspend for a moment the effect of physical laws, but do not revoke them. So, too, the case of these Saints, real living miracles in whom high sanctity made up for all the rest, does not make the lesson We have been teaching any the less true or any the less necessary.

It is clear, then, that virtue and learning are required, that there is need of example and of edification, need for the priest to spread on all sides, and to all who draw near him, “ the good odour of Christ.” This need is to-day more keenly felt, and has become more evident and urgent. This is because of Catholic Action, that movement so consoling, which has within it the power to spur on to the very highest ideals of perfection. Through Catholic Action the relations of the laity with priests are becoming more frequent and more intimate. And in this collaboration, the laity quite naturally look upon the priest not merely as a guide, but as a model also of Christian life and of apostolic virtue.

## TREATISE XX THE RELIGIOUS STATE

### CHAPTER I

#### THE RELIGIOUS STATE IN GENERAL (c. 487)

The religious state is a fixed state of life lived in common, in which the members of that state undertake not only to observe the precepts that are binding on all men, but also to aim at the perfection of charity, chiefly through the observance under vow of the evangelical Counsels of poverty, chastity and obedience. This state, the canons declare, is to be held in honour by all men.

2.His Holiness, Pope Pius XI, when addressing the world from the Vatican, February 12, 1931, speaking of the religious state, said : “ Now We speak to you, the sons and daughters of our love, who not only fulfil the precepts, but also the wishes and counsels of your divine Spouse and King, in the observance of your most holy vows and in the religious discipline throughout life ; re-invested by the Son of God, you sustain and enrich the Church by your prayers and teaching, and promote the Faith by the ministry of your word and by the works of your apostolate. Enjoying a vocation truly celestial and angelic, you must guard that treasure with the utmost care, not only to ensure your vocation, but also in order that the heart of your Spouse and King may find in your devotion some consolation and reparation for the offences and negligences by which men repay His ineffable love.”

3.The three vows are essential to the religious state, as is also a life lived in common, the latter by reason of ecclesiastical discipline. Life in common is merely subjection to the same rule and the same Superiors ; a life in common under the same roof is the normal requirement, but exceptions are made in the canons for particular cases. The Holy See has reserved to itself the granting of faculty for a



Religious to be absent from the religious house for more than six months, unless absence is necessary' for the purpose of studies (c. 606). Fixity of life is primarily secured by the perpetual vows, but fixity is also secured by temporary' vows taken with the intention of spending the whole of life in a Religious Institute. The substantial vows of Religion are the three mentioned, but accessory vows are also taken, such as the vow to serve the sick, to teach, to observe strict abstinence. Juridical approval by the Holy See is a necessary condition of the religious state. Mention has already been made, when treating of the Counsels of perfection, of the doctrine that the religious state is of divine institution, inasmuch as Christ our Lord commended and counselled the three substantial vows, which connote a fixed and permanent state of life.<sup>1</sup>

4. Religious are they who live in community and aim at perfection by the observance of the evangelical Counsels, not that each Religious has arrived at perfection, which is the perfect union with God by charity, but because the state which has been adopted is one that of its nature helps and obliges one to aim at perfection. This a Religious does by removing the obstacles to divine charity, for by the three vows, he forgoes what, without them, he might have lawfully done, and by removing all those things which might prevent his will wholly tending to God.<sup>2</sup>

<sup>1</sup> cf. *svpra*, vol. I, p. 197 sqq.                      <sup>2</sup> a S. Th., 5. 2. 2, q. 184, a. 5.

CHAPTER II

CANONICAL DEFINITIONS (c. 488)

- 1. An Institute (*religio*) is a society, approved in the Church, whose members tend to evangelical perfection in accordance with the laws of that society by taking public vows, perpetual or temporary, the latter being renewable after the lapse of a fixed period.
- 2. An Order is an Institute whose members take solemn vows.
- 3. An exempt Institute is not subject to the jurisdiction of the local Ordinary.
- 4. A Religious Congregation is an Institute whose members take simple vows only, whether perpetual or temporary.
- 5. A Pontifical Institute (approved by the Holy See) is one that has obtained from the Apostolic See either approbation or at least a decree of commendation.
- 6. A diocesan Institute is one erected by the Ordinary, which has not obtained the decree of papal commendation.
- 7. A clerical Institute is one in which the majority of the members are ordained priests.
- 8. A lay Institute is one in which the majority of the members are not ordained priests.
- 9. A religious house is a house of a Religious Institute.
- 10. A regular house is the house of an Order.
- 11. A formed house is a religious house in which dwell at least six professed Religious, of whom four at least must be priests if it is a house of a clerical Institute.
- 12. In a Congregation simple vows are taken; Regulars are members of an Order; Sisters take simple vows, Nuns take solemn vows normally.
- 13. Higher Superiors are Abbot Primate, Abbot Superior of a monastic Congregation, or of an independent monastery, Superior General of an Institute, Provincial, Vicar of Provincial, all who have a Provincial's power.



## CHAPTER III

## THE GOVERNMENT OF RELIGIOUS (cc. 499'5\*7)

All Religious are bound to obey the Pope by virtue of their vow of obedience, for he is supreme Superior. Religious are also subject to their local Ordinary unless exempted by privilege granted by the Holy See, such privilege, however, being without prejudice to powers which the law may have granted to local Ordinaries over exempt Religious.

2. Superiors and Chapters have dominative (governing) power over their subjects in accordance with common law and their respective constitutions; in a clerical exempt Order, they have ecclesiastical jurisdiction in both the internal and the external forum.

3. In a clerical Religious Institute, the Superior has the right and duty, personally or by proxy, to administer Holy Viaticum and Extreme Unction to those sick who are professed or novices, and those dwelling in the religious house day and night for domestic service, education, hospitality or illness, and to the professed and novices outside their religious house, but without prejudice to the rights of the parish priest, namely, to carry Holy Communion publicly to all within his territory.<sup>1</sup>

4. In a lay Religious Institute this right and duty belongs to the local parish priest or to the Chaplain if appointed by the Ordinary in accordance with the canons (c. 464, 2).

5. In regard to the spiritual care of Religious, Superiors must see that all their religious subjects make a spiritual retreat each year, assist at Mass daily unless legitimately prevented, make the meditations, say the prayers and other spiritual exercises of piety prescribed by the rule, receive the Sacrament of Penance at least once each week. Furthermore, Superiors must foster frequent, even daily reception of Holy Communion. If, however, a Religious has given

<sup>1</sup> c. 848: P.C.G.J., June 16, 1931.

grave scandal to the community since the preceding confession, or has committed a serious external fault, he or she may be forbidden to receive Holy Communion until sacramental confession has been made.

## APPENDIX

**Religious who are Chaplains to the Forces**

The S.C. for Religious issued an Instruction, Feb. 2, 1955,<sup>1</sup> on military chaplains who are religious. It is to be observed that, while decrees of Sacred Congregations make law which is strictly obligatory, Instructions rather lay down the line to be followed than demand literal observance.<sup>2</sup> The following are the chief points in this Instruction which concern the chaplains themselves.

i. They are appointed and removed from office in the same way as Parish Priests (can. 456, and 454, §5), the local Ordinary being the Ordinary of the Forces. In all that concerns their religious and priestly life they are subject to their superiors in the same way as religious who are parish priests. They remain bound by their rules and constitutions, and dispensations are to be sought from their superiors when necessary.

2. They should not be appointed for more than five years, the consent of the Superior being renewed every second year. At the end of the five years their appointment should not be renewed until they have spent at least some months in a religious house of perfect observance. But the Superior can dispense, especially in the case of those who have not been entirely deprived of community life.

“<sup>3</sup> Each chaplain should be attached to a house of his order, the superior of which should have care of his spiritual and material well-being.

4. They should sleep in a house of their own order, if possible; if not, in some religious or pious house.

5. They should at stated times give to their superiors an account of money received and hand in any surplus (can. 594, §2).

6. They should endeavour to excel other chaplains in fraternal charity and priestly zeal.

7. They should make a retreat annually, ordinarily in a house of their own order, and should spend a monthly day of recollection in some religious house.

8. They should spend their holidays in religious houses or in other places appointed by their superiors, not with relatives or in places of their own choosing.

<sup>1</sup> A.A.S., XLVII, p. 93.

<sup>1</sup> Verm.-Creus., Epit. I, 132.



## CHAPTER IV

### RELIGIOUS VOCATION (c. 538)

#### SECTION 1. Special and General Vocation

Any Catholic can be admitted into a Religious Institute if not prevented by a legitimate impediment, if he have a right intention and is capable of fulfilling the obligations of the Religious Institute. It must be admitted that God can and sometimes does give a special inspiration to an individual to enter religious life. But this is not the normal way of His Divine Providence. From the experience of the majority of those who enter this life, we may state it as a fact that no specially experienced inspiration normally takes place, but the mind is made up, sometimes quite definitely, sometimes with hesitation and uncertainty, that a religious life may be adopted. We are, therefore, concerned here with the necessary factor in a vocation not due to any immediate or powerful impulse of divine grace.

All good and upright states of life are pleasing to God (1 Cor. 7, 7) ; the gift of perpetual continency is within the reach of all who, for the sake of the kingdom of heaven, have chosen a life of celibacy (Mt. 19, 12) ; many rightly choose the married state (Mt. 19, 11 ; 1 Cor. 7, 9) ; a general exhortation is given to continence, poverty and perfection (1 Cor. 7, 7 ; Mt. 19, 12, 29) ; some have a special invitation to follow Christ more perfectly than the ordinary Christian : “ And another of His disciples said to Him : Lord, suffer me first to go and bury my father. But Jesus said to him : Follow Me, let the dead bury their dead ” (Mt. 8, 21). A free choice is left between the more perfect and the less perfect life : “ He that giveth his virgin (daughter) in marriage doth well, and he that giveth her not shall do better ” (1 Cor. 7, 38) ; “ If thou wilt be perfect, go sell what thou hast and give it to the poor and thou shalt have treasure in heaven, And come follow Me ” (Mt. 19, 21).

#### SECTION 2. Teaching of the Fathers and Theologians

The subjoined catena of passages from some of the Fathers of the Church and representative theologians, make it clear that no particular vocation to the religious life is necessarily to be expected.

S. Basil wrote : “ It is within the power of anyone to embrace the evangelical mode of life.”<sup>1</sup>

S. Gregory Nazianzen : “ When you hear the words : ‘To whom it is given,’ add, ‘it is given to those who are called and to those who are disposed in mind.’ ”<sup>2</sup>

S. John Chrysostom : “ To those is given the gift of virginity who wish it.”<sup>3</sup> “ Christ said to the young man : ‘ If you wish to be perfect,’ in order to draw him, but He left it to his free choice.”<sup>4</sup>

S. Ambrose : “ May not those prefer God to whom it is allowed to choose a spouse ? ”<sup>5</sup>

S. Cyprian presupposes in his *de habitu Virginum* that virginity is possible by the grace of God and the avoidance of the occasions of sin to those who have chosen that state

Tertullian wrote : “ Choose what is good ; if you cannot because you do not wish, the Lord shows that you can if you wish, because He has proposed both (alternatives) to your free will.”<sup>6</sup>

S. Bernard wrote : “ The rule of S. Benedict is proposed to all men, imposed on none. It is profitable if devoutly chosen and maintained, but if it is not chosen there is no sin.”

S. Thomas Aquinas taught : “ It is not only praiseworthy to induce others to join the religious state but most meritorious. He who comes to this state need have no doubt as to the origin of his resolve ; it comes from the Spirit of God. . . . If there exists any obstacle to entrance into this state of life, deliberation and advice are necessary ; but lengthy deliberation is not at all necessary. The invitation given by our Lord to the young man is to be so understood

<sup>1</sup> M.P.G., 32, 647. <sup>4</sup> M.P.G., 36, 298. <sup>5</sup> M.P.G., 58, 600. <sup>6</sup> In Mt. 19, 21.

<sup>3</sup> *de Virg.*, c. 5. <sup>2</sup> *de Monog.*, 14.



as though it were issued to all men.” To the objection that want of perseverance is a sign that the resolve to enter religious life was not from God, S. Thomas replies : “ To some, the resolve to enter religion was a grace given by God, but He has not given these the gift of perseverance. Sometimes, they who bind themselves by vow to religion withdraw, and falling into despair give themselves up to all kinds of wickedness and so become the children of gehenna. But has their incredulity made God’s fidelity of no account?”<sup>1</sup>

S. Bonaventure wrote : “ It is not sinful not to enter the religious state, but it is a grave sin to take an oath that one will never aim at perfection because this is contrary to the inspiration of the Holy Spirit.”

Suarez stated his opinion thus : “ It is to be assumed that everyone—prescinding from obstacles—is *per se* a fit subject for entering religious life, for everyone is *per se* capable of the Christian perfection which is the goal of the religious life, and consequently the Counsels of perfection are addressed to all . . . there is no reason why we should always expect an extraordinary grace or calling of the Holy Ghost before we deliberate or consult others about this state of life. Although one does not feel any attraction or desire for the religious life, if one had any thoughts or interior movements in regard either to the dangers of the world or the excellence of the religious state, this is a beginning of a vocation.”<sup>3</sup>

Lessius says : “ The invitation of Christ is addressed to each and all who can follow the call. No one is excepted. To all it is said : ‘ He who can take it let him take it, that is, I force no one, I invite everyone ’ . . . These words are suited to all men : ‘ If you wish to be perfect, go sell what you have and give it to the poor.’ If one proposes to enter religious life with the determination to renounce the world and to maintain both interiorly and exteriorly all that religious life demands and prescribes, it may not be doubted that such vocation is from God.”<sup>4</sup> Lessius severely reprobates the conduct of those who defer their entrance into religious

<sup>1</sup> S., 2. 2, q. 189 ; *Opus.* 3 (ed. Rom., 17).

<sup>3</sup> S., d. 39, a. 3, q. 3, n. 2.

\* *de Statu vite deligendo* n. 38,

» *de falig.*, tr. 7, lib. 5, c. 4.

life on the pretext of testing their vocation by living for a time in the world.

### SECTION 3. Modern Views on Vocation

Modern theologians, since the time of S. Alphonsus, do not appear to be unanimous either on the signs of a vocation or the sinfulness of rejecting a vocation. It will be sufficient to indicate here what appears to be the more common view, without quoting lists of authorities for and against the view that is here suggested. The following summary appears to the writer to represent the teaching of divines before the time of S. Alphonsus and it is in accordance with the general opinion of recent theologians :

1. God gives a general vocation to the religious life to all who are capable of fulfilling its obligations.

2. In doubt as to a true vocation, there is no need to attempt to arrive at certainty in respect of a personal call. The matter should be submitted to a wise director who will be able to judge of a vocation by the fitness and good will of the aspirant. But the ultimate decision of fitness must be left to the Superior of the Religious Institute it is wished to enter.

3. In public sermons it is right to point out that the choice of any good Catholic state of life is pleasing to God, if chosen with a good intention, but that the religious state is in itself more pleasing to God than life in the world.

4. Apart from a very clear and insistent call from God, it is not sinful to set aside the general invitation of God to religious life. Therefore, the perils of damnation should never be set before those who prefer to live a good life in the world rather than a life in the religious state. Encouragement to enter religious life should be given from the motive of the love of God, service of Him, service of others, and greater certainty of salvation.

5. The motive for entering religious life should certainly be supernatural, that is, based on virtue, desire for salvation and perfection. Human motives need not, however, be discouraged if they lead to a supernatural view of a vocation.

6. Particular obstacles to entering religious life are



considerable difficulty in preserving continency, stubbornness, indocility, unsociability, too great propensity to human comforts, melancholy, eccentricity, inconstancy.

7. Interior movements urging to religious life that continually assert themselves in spite of interior conflict and repugnance, may be the sign of a special vocation. The subject of such impulses should pray often and for a considerable time, make a spiritual retreat, and be guided by his director.

8. Those who lead a good and innocent life may be exhorted to give some thought to the possibility of a vocation. If, after an interval of about six months or a year, they do not feel any attraction to religious life, they should not be pressed but left to make their choice in peace.

9. Confessors and directors are justified in advising their penitents to pray for a vocation to the religious state, but they should be prudent and not attempt to settle another's state of life. Great disappointments will occur. Only the few will renounce the world, so that if a confessor succeeds in one case out of four or five in fostering what appears to be a vocation, he may be well content. In clear cases he is justified in positively advising the choice of the religious life.

10. Want of perseverance in religious life may be due to want of aptitude discovered only after some time spent in religion. Superiors cannot infallibly decide cases on a short acquaintance. Mistakes will be made, but experience proves that they are few. It is quite possible that God may give a vocation to spend only a few years in religious life. It must also be admitted that, even with perfect aptitude for religious life, the good intention of serving God in that state may disappear owing to some moral fault, such as inconstancy.

11. In spite of the growth in numbers of Religious in every part of the world, it must be admitted that vocations are more imperilled now than formerly, for the young, at least those of the wealthier classes, are brought up in an atmosphere of pleasure and excitement. If some of these enter the religious state, they are the more to be honoured. In view of modern conditions, it will be well to accept can-

didates at as early an age as possible, before the allurements of the world have cast their spell over them. The conflict in the youthful heart between grace and worldly attractions is often intense. A fervent body of Religious will deserve and will receive youthful recruits, for God will bestow more congruous graces to meet present needs.

#### Note on Vocation

Vidal thinks that although entrance into religious life is indeed the most fitting way of following the evangelical Counsels, it is not the only way, nor is it possible in all cases. Consequently, the general invitation of God to all persons who are fit to follow the Counsels does not necessarily imply an invitation to enter the religious state. This is the more obvious, since the religious life is not only a life passed in accordance with the Counsels, but includes the perpetual vows, to observe which a Religious is bound by an added obligation of the virtue of religion. This obligation appears to demand some special interior grace. Therefore, vocation to perfection is not the same as vocation to the religious life. Added to this is the fact that religious states differ very much from one another in respect of austerity, and it would, therefore, appear that a special call is necessary.<sup>1</sup>

Notwithstanding the authority of the author, we believe that God gives a general vocation to all persons who are fit for religious life, and leaves it to the choice of each to select the particular Religious Institute which is suitable. Fitness for an austere life is merely a condition, as it were, for the grace to be offered.

<sup>1</sup> *Jus Canonicum*, III, n. 239.



## CHAPTER V

## POSTULANCY (cc. 539-541)

A *postulant* is one who is submitted to a test in respect of vocation to religious life before being admitted to the noviciate, the period of training before the vows are taken. In Religious Institutes with perpetual vows, all women and, in the case of male Religious, all who intend to be lay-brothers, are bound to spend at least six months as postulants before admission to the noviciate. In Religious Institutes of temporary vows, the respective rules of these Institutes are to be observed in regard to the period of postulancy. The higher Superior, usually the Provincial, may extend the period of postulancy, but not beyond an additional six months. The postulant must complete the period of probation either in the house of the novices or in some other house of the Religious Institute where religious discipline is exactly observed in accordance with the constitutions, and under the particular care of an experienced Religious. Such postulants are to wear a becomingly modest dress but one different from that of the novices. In monasteries of nuns, the aspirants during postulancy are to observe the law of enclosure, but not under pain of censure. Before being admitted as novices, postulants must make the spiritual exercises for eight days complete, and make a general confession of their lives in accordance with the prudent judgment of their confessor, since a confessor may judge it expedient not to allow a postulant to confess past sins for reasons of peace of mind.

## CHAPTER VI

## THE NOVICIATE (cc. 542-571)

## SECTION 1. The Obstacles to Admission

The following are invalidly admitted to the noviciate without dispensation, namely, those who, having apostatized from the Catholic Faith, have joined an heretical or schismatic sect, not those born in a sect<sup>1</sup>; those who are not fifteen years of age; those who enter the religious state under the influence of duress, grave fear, or deceit, or if such influence has been exercised over the Superior who admitted them; those in the married state; those who are or have been bound by the ties of religious profession, whether of perpetual or of temporary vows, in the same or any other Religious Institute; those in danger of imminent punishment for some grave crime of which they have been or can be accused; a bishop, residential or titular, even if only designate; clerics, who by a disposition of the Holy See are bound, under oath and for the duration of the oath, to serve their diocese or mission.

2. The following, if admitted, would have been unlawfully though validly, admitted, namely, clerics in Sacred Orders without consulting the local Ordinary, or contrary to his prohibition on the ground that their departure would result in grave harm to souls that could not otherwise be prevented<sup>2</sup>; those burdened with debt which they cannot pay<sup>3</sup>; those who are obliged to render account of some liability or are tied by other secular business, in consequence of which the Religious Institute might apprehend lawsuits

<sup>1</sup> P.C.C.J., Oct. :6, 1919. An atheistic sect is included (*ibid.*, July 30, 1934.).

\* Clerics not yet in Sacred Orders are not, by law, obliged to consult their bishop in this matter, but it would be right to do so, if the diocese had been put to expense in training and educating them.

<sup>3</sup> It is held (Verm., III, n. 115) that the canon refers to those who, by remaining in the world, could pay their debts. Those are excused who have contracted debt without any fault, but obviously attention must be paid to the civil law in these matters.



or difficulties, as would be the case in matters of administration of funds, legal guardianship and the like ; those who are obliged to help father, mother, grandfather, grandmother in grave need ; parents who have to nourish or educate their children ; those who would be destined for the priesthood in a Religious Institute but are debarred by an irregularity or some other canonical impediment ; those of the Oriental rite who seek admission to a Latin Religious Institute without previous written permission of the Sacred Congregation for the Eastern Church. The last impediment does not apply to Orientals who retain their rite, and enter a Latin Institute to prepare themselves for founding houses or provinces of their own rite.

#### SECTION 2. Some Conditions precedent to Admission

i. The right of admitting aspirants to the noviciate and subsequently to religious profession belongs to the higher Superior acting with the consultors or Chapter in accordance with the respective constitutions. Aspirants must produce certificates of their Baptism and Confirmation, and in the case of males must produce testimonial letters of the local Ordinary of their birthplace<sup>1</sup> and of every place in which they have resided for more than a year, morally continuous, after the age of fourteen years. Aspirants who have been in a seminary or college, in another Religious Institute, as postulant or novice, must also produce testimonial letters from the respective Superiors, who must have consulted the local Ordinary. Aspirant clerics must produce the certificate of their ordination and also testimonial letters from the local Ordinaries in whose dioceses they have resided after ordination, for more than a year, morally continuous, to whom the preceding rule also applies. A professed of one Institute passing to another with Apostolic induit requires only the testimonial letter of the former higher Superior.<sup>2</sup>

<sup>1</sup> Birthplace, that is, the domicile or quasi-domicile of their father or, failing that, of their mother at the time of birth.

<sup>2</sup> The local Ordinary' must refer to the Sacred Congregation of Seminaries the case of one who belonged to a Religious Institute and wishes to enter a Seminary. A Religious Superior must refer to the same Congregation the case of one who left a Seminary' and wishes to become a Religious (S.C. de Rel., July 25, 1941). But this procedure is not necessary when a subject wishes to pass at once from one state to another (loc. cit., May 11, 1942) provision is made in c. 544, §3.

2. As to a female aspirant, the local Ordinary or his substitute must, at least thirty days before the noviceship, and before the subsequent profession, examine her freedom in taking the step, her understanding of it, and intentions. The Superioress gives notice at least two months in advance.

3. If the aspirant wishes to be a nun in an Institute of solemn vows, she must bring the dowry settled by the Institute or legitimate custom; it is given before the habit is taken. The dowry cannot be condoned either wholly or in part without Apostolic induit, or the permission of the local Ordinary, according as the Institute is pontifical or diocesan, but in Institutes of simple vows, the Constitutions may empower the Superior and Council to dispense. The dowry is acquired by the Institute on the death of the Religious who gave it.

4. After the first religious profession, the dowry must be invested legally and profitably and not expended before the death of the Religious. It must be administered at the house of habitual residence of the higher Superior. Local Ordinaries must see that dowries are kept safe and demand an account of them.

5. If a Religious quits religious life, her dowry must be returned to her intact, but not the interest that accrued. If she joins another Institute, the interest only must be given to it during her noviciate. After her profession in another Institute, the dowry is transferred. If the Religious passes to another house of the same order, the dowry must be given to it at once. If, when a nun quits religion, the dowry is not sufficient for her, the Institute must supply her with a charitable subsidy (S. C. de Rel., March 2, 1924).

#### SECTION 3. The Actual Noviciate

I. The noviciate is begun by taking the habit or in any other prescribed manner. It must last for a year uninterruptedly and be passed in the house of the noviciate. If a longer period is prescribed, the additional term is not essential, unless so stated in the rules. The canonical year may be transferred to the second year of noviciate by Apostolic induit (P.G.G.J., Feb. 12, 1935).



The noviciate is discontinued and must be resumed if a novice quits the house after dismissal, or has quitted the house without leave intending not to return, or if the novice has remained out of the house, though intending to return, beyond thirty days, continuously or not, for any reason whatever, even with permission. But if he has been out of the house with permission, or has been forcibly detained outside the noviciate under the obedience of his Superior for more than fifteen days but not beyond thirty, that the noviciate may be valid, it is necessary and sufficient that these missing days should be made up. If absence, as above, was not more than fifteen days, the Superior may order them to be supplied, but not under pain of invalidity. The noviciate is not interrupted by a novice passing from one noviciate to another of the same Institute with permission, but days of transfer are days of absence.<sup>1</sup>

3. Novices enjoy all the privileges of their Institute ; if a novice die, he has a right to the same suffrages as are prescribed for the professed. Before the first profession, whether vows are temporary or perpetual, the novice must transfer the administration of his property to whom he wishes for the whole period of his simple vows, and dispose freely of their user and usufruct unless the Institute rules otherwise. The transference must be made after the vow's, if the Religious has either omitted to fulfil this prescription or has come into property after his profession. A novice in a Religious Congregation must freely make a last will before his first profession in respect of the property he has or may get. Before taking his vows the novice must make a spiritual retreat of at least eight full days.

4. An Apostolic induit is necessary in order that the canonical year of the noviciate mentioned in canon 555, 1, n. 2, may be transferred to the second year of the noviciate, where a second year is required by the constitutions of a Religious Institute. The local Ordinary can dispense from the second year, if not required for validity of profession, but can do so only in the case of a diocesan Institute.<sup>2</sup>

<sup>1</sup> P.C.C.J., July 13, 1930.

<sup>2</sup> P.C.C.J., Feb. 12, 1935.



## CHAPTER VII

### RELIGIOUS PROFESSION (cc. 572-586)

#### SECTION 1. Validity of Religious Profession

Vows in Religious Institutes are simple or solemn, one of the differences being that by solemn vows a Religious is considered more perfectly consecrated to God and more completely set aside by the Church for the life of the evangelical Counsels. Simple vows may be temporary or perpetual.

For the validity of religious profession it is required that the subject should be sixteen years of age for the temporary vows, twenty-one for the perpetual vows, that the legitimate Superior has admitted him to profession in accordance with the constitutions of the Institute, that he has validly completed the noviceship, took his vows without being the victim of force, grave fear, or deceit, that his profession is explicit, accepted by a legitimate Superior or his substitute, and if perpetual vows are taken, that the temporary vows have preceded them. The temporary vows must be taken in the house of the noviciate.

When the period for which temporary vows have been taken in an Order or a Congregation with perpetual vows has elapsed, the Religious must make perpetual profession, solemn or simple, in accordance with the constitutions, or return to life in the world. Religious of a diocesan Institute can be dismissed by the local Ordinary (c. 647). For the first temporary profession, the vote of the Council or Chapter is deliberative, that is, the Superior needs their consent ; for subsequent perpetual profession, the vote is consultative, that is, the vote must be got but need not be adopted.

#### SECTION 2. Effects of the Vows

The effects of profession of temporary vows are that the subject enjoys the indulgences, privileges and spiritual favours enjoyed by those professed of solemn or perpetual simple vows, and on his death has the right to the same

suffrages ; he must observe the rules and constitutions, but where there is the obligation of choir, he is not obliged to recite the divine office privately unless he is in Sacred Orders, or is expressly obliged to do so by the constitutions. Simple vows, temporary or perpetual, render acts contrary to the vows unlawful, i.e., sinful, but not invalid, unless this is stated ; solemn vows render such acts invalid if capable of being invalidated. Those professed of simple vows retain proprietorship of their property and are capable of acquiring other property unless the contrary is stated in the constitutions ; whatsoever they may acquire by labour or as members of a Religious Institute they acquire for the Institute. Though a Religious celebrating Mass on behalf of another without taking an alms does not violate the vow of poverty, nevertheless, after receiving an alms for some work done, the disposal of it without permission would be a violation of the vow. A professed of simple vows cannot validly make renunciation of his actual property before sixty days preceding his solemn profession ; he must do so within sixty days preceding solemn profession unless the Holy See, in particular cases, has settled otherwise. After profession, all that is necessary to give the renunciation legal effect must be fulfilled.

The special effects of solemn profession are that the subject has become a Religious in the strictest sense ; there have arisen bilateral obligations between himself and his Institute which cannot by mutual consent be broken ; he is obliged to attend choir where there is such obligation in his Institute, and to recite the divine office privately if he is not a laybrother ; he is freed from the bond of a marriage that has not been consummated, and cannot validly contract marriage (c. 1073) > he is absolved from the irregularity of illegitimate birth, if illegitimate (c. 984) ; he is incapable of valid acts that are contrary to his vows, if such acts can be invalidated, such as contracting pecuniary obligations or acquiring personal rights to temporal goods ; he is incapable of retaining dominion of his property, apart from contrary Apostolic induit.<sup>1</sup>

<sup>1</sup> Verm.-Creus., *Epit.*, I, n. 685.



### SECTION 3. Convalidation of Vows

Religious profession is sometimes invalid owing to some extrinsic impediment, as defect of age. Profession made under such impediments is not rectified by subsequent acts, but it must be convalidated either by the Holy See or by a legitimate renewal of profession, its previous nullity being known and the impediment being removed. If, however, profession was invalid owing to want of consent, it will be sufficient to elicit consent, so far as the subject is concerned, and if the Institute has not revoked its own consent (c. 586).

## CHAPTER VIII

### THE OBLIGATION OF THE RELIGIOUS VOWS (cc. 592-612)

#### SECTION 1. General Principles

Religious are bound not only to observe their vows but to try to reach perfection by the means indicated by their particular rule of life. This obligation is one of aiming at Christian perfection or love of God by fidelity to the vows and loyal observance of rules. Rules may or may not bind under sin. If they do not, contempt of rule would be a serious sin if it connoted contempt of authority or of perfection. All Religious are bound by the common obligations of clerics as set out in the canons (cc. 124-142), unless the contrary is evident from the nature of things or the context of the canons.

#### SECTION 2. The Vow of Poverty

I. The obligations of the vow of poverty are as follows:

(a) Professed Religious are forbidden the independent use of things that have a price, even though these things belong to the Religious Institute. Material benefits which a professed Religious earns by his own labour accrue to the Religious Institute, so that without permission he cannot alienate such earnings without violating the vow of poverty and the virtue of justice.

(ā) The matter of the vow of poverty is every chattel that has a money value. Consequently, the following are not included in the definition, viz., honour, reputation, actual labour, skill, art, manuscripts whilst held in possession. But a Religious may not give away or alienate any manuscript of his own that has an appreciable value.<sup>1</sup> It is not a violation of vow or of justice to destroy a personal manuscript unless, perhaps, when the Institute has supplied materials of some appreciable value. Nor is it a violation of the vow for a Religious to make a present of the fruit of his skill or



art exercised on material which another has supplied, as in the making of a statue or painting of a picture.

(c) The vow of poverty is violated in the following cases, namely, by acceptance of presents to be kept without permission, or making gifts without leave ; by renouncing a right already acquired, as that to a legacy or inheritance, or reward due to labour, though refusal of an alms or a donation for the community not as yet accepted and handed over is a sin against charity only ; by exchanging chattels, but if they are of the same fungible character, as money, there is probably no sin, or if they are similar in nature the fault will not be serious. It is violated by consuming food or drink given to be taken into the religious house and consumed at will, not, however, if food or drink is consumed outside the religious house at the invitation of an extern, any more than it would be contrary to poverty to behold a spectacle, hear a concert, or see pictures at the expense of an extern.<sup>1</sup> It is violated by lending articles for consumption or for use, but the sin would be slight if restitution was certain and the loan was for a brief interval ; by using money given for travelling and reasonable expenditure for other purposes ; by extravagance in the use of things permitted, or by careless administration of the goods or money of the house. Furthermore, the vow is violated by retaining books longer than is necessary ; by concealing articles, even if borrowed with permission, so that the Superior cannot recover them, unless they are concealed or locked up in order that others or a lower Superior may not wrongfully disturb the holder ; by destroying a thing for one's personal advantage ; by accepting a deposit of money for one's own use, not, however, if the depositor retain both dominion and use, nor if money is put at the disposal of a Religious to be spent on a pious purpose already specified by the donor and, probably, if left to the Religious to be specified unless forbidden by rule.

A sin against justice is committed by a Religious who damages, steals, retains, or gives to others what belongs to the community or to others. Injustice but not sacrilege is committed when a Religious, out of wanton destructiveness,

<sup>1</sup> Lugo, *de Just.*, d. 3, n. 53.

damages that which belongs to another. Sacrilege but not injustice is committed if he accept from an extern something that can be used up, and appropriates it to his own use. Sacrilege and injustice are committed if he receive Mass stipends and does not give them to his Superior.

2. That the vow of poverty may not be violated by the independent use of things, the Superior's permission is requisite. It is obvious that either express, tacit or reasonably presumed permission is sufficient. Thus, where there is a known custom of receiving and giving away articles of trifling value, there is tacit permission to do so ; where there is permission to receive small things which are really not required there is permission to give them away ; where money is given for a journey, or a mission, or for expenses in staying out of the house for a brief period, where custom sanctions small gifts to servants, presents to benefactors, or alms to the poor, the vow is not violated by doing such things. The permission in such cases is tacit ; but even if it is reasonably presumed no sin is committed. Presumed permission is permission that would be given if sought. Interpretative permission is less than this, as it is permission that would probably be given if the Superior knew the circumstances. Permission that is reasonably presumed when the Superior cannot be asked is a valid presumption, but permission to retain the thing taken with presumed permission must be sought, if possible, when the Superior can be asked. It is obvious that the practice of presuming permission will weaken the spirit of poverty and might lead to sin. When the Superior is known to object to anything being received or disposed of without his express approval beforehand, i.e., objects to the use of the thing, it would be a violation of the vow to act without that approval ; if, however, he objected only to the manner of acting, that is, to the neglect of asking permission, the vow is not violated by presuming permission. Though it is fitting to notify the Superior of a leave presumed, there is no strict obligation, so far as poverty is concerned, to do so unless an article is retained. But particular precept to do so would be binding.

When a Superior wrongly gives permission for super-



Unities, useless expenses, and such things as are unbecoming the profession of poverty, and that to a great degree, he violates the vow of poverty, and the subject, knowingly using such permission, probably also violates the vow. A Superior might unreasonably refuse to give permission. The vow of poverty still binds the subject, unless, probably, the constitutions or the Natural law justify him in acting, as would be the case in matters that are necessary for his maintenance or clothing in accordance with his mode of life. But to presume the permission of a higher Superior, when the immediate Superior has refused, would certainly lead to laxity in preserving the vow of poverty ; however, in rare cases, when, by delay, there is danger of serious harm, such permission may be presumed.

3. Violation of the vow of poverty is always a sin against the vow, that is, against religion, and may be also a sin against justice. In the act of proprietorship, i.e., the independent use of what is contrary to the vow, inasmuch as it is the use of what is not one's own to use or dispose of, it is generally held that the quantity that would normally be a grave theft is a grave violation of the vow. But it is clear that a relative standard should be taken. The real question is : What must be considered serious matter in respect of a particular Religious ? That will depend on the degree of poverty professed in his Institute, and therefore it may be less than the absolute sum. This principle applies to violations of the vow only.<sup>1</sup> In regard to violation of justice in respect of the common property of a religious house, it is necessary to take a relative standard. If the house is wealthy, a grave sin will be committed by disposing of that amount which would be absolutely grave in the case of property belonging to a corporate body. If the house is not wealthy, a relative standard must be taken.<sup>2</sup>

A greater quantity would be required for grave sin against the vow if a Religious disposes without permission of money or goods the dominion of which he lawfully retains, so that if he disposes of them for his own benefit he must be judged by the kind of poverty that he professes ; if he alienates

<sup>1</sup> Verm., III, n. 130.

<sup>1</sup> Gén., II, n. 98.

them, the absolute standard of theft in general may be probably increased four or five times. This opinion is, at best, a probable one.<sup>1</sup> In matters of food and drink consumed by a Religious, a grave sin will not be committed unless they are quite out of the way and very expensive. Small offences against the vow but not against justice probably do not become grave matter by coalescence, unless a Religious intends to take a grave amount by instalments, or unless he keeps by him the accumulated small amounts until they constitute a grave amount which he cannot retain without grave sin.

Since the religious Superior is the administrator not the owner of the goods of his religious house, the subjects cannot be regarded as sons of a family, but their culpability in theft from the common goods may be more leniently judged than if externs stole these goods, for the goods of a religious house are for the use of the Religious. The grave amount in the former case would be more than the grave amount if externs stole the goods of the religious house ; perhaps half as much again.<sup>2</sup> A Religious who has sinned against justice in respect of his community can make restitution by retrenching permissible expenditure.

### SECTION 3. The Vow of Chastity

By virtue of religion, one who has taken the vow of chastity in the religious state is bound to preserve both interior and exterior chastity and is forbidden to marry. But one under the simple vow of chastity in religion could marry validly though not licitly (unless such vow, by special privilege, invalidated subsequent attempted marriage), and by using marriage rights he would violate the vow not the virtue of chastity.<sup>3</sup> Thus, the vow of chastity includes the vow of celibacy. Those who have taken a solemn vow of chastity cannot even validly contract marriage.

As in the case of the virtue of chastity, so in the case of the vow, every sin internal or external is grievous, if intentional

<sup>1</sup>Venn., III, n. 130, 3. >\

<sup>2</sup>Venn., III, n. 135 . Gén., II, n. 99.



and deliberate. One who has taken a solemn vow of chastity and who presumes to attempt an invalid marriage, even civilly, is excommunicated. This excommunication is reserved to the Holy See. If the vow was simple and perpetual, the excommunication incurred by marriage is reserved to the Ordinary (c. 2388). Ignorance, if not studied, excuses from the incidence of the censure.

#### SECTION 4. The Vow of Obedience

1. By the vow of obedience, a Religious is under the obligation of performing what his Superior enjoins in accordance with the rule of the Institute. The Superiors in respect of strict jurisdiction are the Pope for Orders and Congregations that are immediately subject to him, and the Regular prelate of an exempt Religious Order. Diocesan Institutes are immediately subject to the local Ordinary. Furthermore, those immediate Superiors who are appointed over Religious are to be obeyed by virtue of the vow. Such Superiors can delegate their power to inferiors, as Priors and Ministers, and local Superiors. Internal acts probably cannot be directly imposed in virtue of this vow. In doubt concerning the power of Superiors, the presumption is always in their favour in matters within their province ; in doubt concerning the rectitude of an order given, a Superior can order the performance of what is probably good. To obey a Superior in all matters that are lawful, even beyond the rules, belongs to the perfection of the virtue of obedience rather than to the vow. Precepts, strictly so-called, are the subject-matter of the vow of obedience, that is, such precepts as are intended to bind the conscience and have reference to the religious state itself and the perfection of Religious. Where rules bind under sin, their violation is contrary to the vow.

2. An order that binds under vow must be issued in some such express terms as, 'in virtue of holy obedience,' or 'in the name of Christ our Lord.' Otherwise, in most Institutes, an order is commonly thought not to bind under sin at all or at most under venial sin. But formal contempt of authority as such is a grave sin. Superiors who issue an

order by virtue of their jurisdiction, communicated to Superiors of Regulars by the Holy See, and not by virtue of their dominative power, bind the subject to exercise the virtue which underlies the matter of the command. Thus, an order in such a case to observe a day's fast obliges the subject to keep the fast, and its violation would be a sin against temperance. Some authors<sup>1</sup> think that such commands bind also in virtue of the vow, for subjects vow to obey the strict precepts of their Superiors.<sup>2</sup>

3. The vow of obedience is violated as follows :

(a) By violating a precept that binds under sin.

(b) By withdrawing oneself without permission or good reason from subjection to a Superior, as by departure or apostasy.

(c) By complete refusal to obey where the subject intends either not to render any obedience at all, or to refuse to obey in a particular grave matter. If he declines to obey in a slight matter that appears useless, the violation of the vow is not then grave.

4. Since the vow of obedience binds by virtue of religion, its violation is a sacrilege. Violation of rule that does not bind under sin will frequently be a sin against some virtue, for a rule cannot ordinarily be violated without a sinful motive. If a rule is materially transgressed for a sufficient motive, or through presumed leave, or through the use of *epieikeia*, no sin is committed. But formal contempt of rule may be a grievous sin of pride.

<sup>1</sup> e.g., Lugo, *de Prius.*, d. 16, n. 172.

<sup>2</sup> cf. Gén-Salms., II, n. 104, note.



## CHAPTER IX

### ENCLOSURE (cc. 597-607)<sup>1</sup>

#### SECTION 1. General Principles

The law of enclosure is imposed by the Church on Religious as a safeguard of perfect religious chastity. It formally consists in the prohibition against certain classes of laypeople entering a religious house, and against Religious going out of their house except under clearly defined conditions. Material enclosure is that part of the religious house that is set apart for the Religious to the exclusion of all others. If we consider the source of the obligation of enclosure, it may be papal, episcopal, due to rule, or to vow. Here papal enclosure is alone treated. By common law, approved by the Pope, papal enclosure is extended only to the religious houses of those Religious Orders in which solemn vows are taken.

Papal enclosure is applied to the houses of members of Religious Orders of men and women when the houses have been canonically constituted as religious houses, even if not formed (i.e., containing fewer than six professed Religious). The law of papal enclosure affects all that part of the house which the religious community inhabits, as well as the orchards and gardens reserved to the Religious, but not the public church and its immediately adjoining sacristy, guest rooms for strangers and the parlour, both of which should, as far as possible, be near the door of the house.<sup>2</sup> The parts within enclosure should be clearly indicated. They are determined by the major Superior or General Chapter, and in the case of nuns, by the local Ordinary.

<sup>1</sup> The excommunication for violation of enclosure is dealt with in the treatise on Censures (*supra*, vol. III, p. 476 sqq).

\* By the Instruction, *Nuper edito*, the Holy See will allow the Superioress to give permission to her subjects to enter the church, if empty and closed, for necessary purposes, such as cleaning and decoration (Verm.-Circus., *Epit.*, I, n. 708).

## SECTION 2. The Law of Enclosure for Male Religious

I. In the case of male Regulars, the enclosure may not be entered by women of any age, class, or condition, under any pretext whatever, with the exception of the wives of those who actually exercise supreme rule in a nation and their retinue. This permission has been extended to include the wives, with retinue, of the Governors of the individual States of the United States of America. (P.C.C.J., Mar. 26, 1952: A.A.S., XLIV, p. 496.) Females who illegitimately violate the enclosure are excommunicated if they have reached the age of puberty; Religious who contrary to the canons introduce or admit females of any age within the enclosure are also excommunicated.

2. Where a house of male Regulars has a part annexed for intern lay students or some other work proper to the Institute, a separate part of the house should, if possible, be reserved exclusively for the Religious and within enclosure. Furthermore, persons of the other sex should not be admitted to those extra-claustral parts of the house which are reserved for lay students, intern or extern, or the aforesaid work, except for a good reason and with the permission of the Superior.

3. The respective rules of an Institute determine when male Religious may lawfully go outside their enclosure (c. 606). Permission of the Apostolic See is required for them to be outside their religious houses for more than six months, except for the purpose of studies. The permission is thought to be tacitly given in the approval of ministerial labours that demand a lengthy absence.

SECTION 3. The Law of Enclosure for Nuns<sup>1</sup>

## 1. The Obligation

The obligation of enclosure is the obligation both of remaining within the enclosure, and of not leaving it without permission of the Holy See, with the limitations set forth below ; secondly, of not admitting within the enclosure any

<sup>1</sup> S.C. de Relig., Feb. 6, 1924.



person of either sex, of any age or condition, without permission of the Holy See, with the limitations set forth below.

## **2. Nature of the Enclosure**

The monastery and adjoining garden must be fenced in so that externs cannot be seen from within nor see within. Windows facing the public street or houses must have frosted glass or shutters. If the choir has grilles, they must be made so that externs cannot see the nuns from the place reserved for the people. In the confessional, the confessor must be outside the enclosure. The place for receiving Holy Communion must be so arranged that the nuns cannot be seen by the people. At the monastery and sacristy doors, and elsewhere if necessary, a revolving frame is to be constructed by which what is necessary can be delivered. The public church and sacristy are to be outside the enclosure, and the nuns cannot go into those places without permission of the Holy See.

## **3. Exceptional Cases**

A nun after profession may not leave the enclosure, except in case of imminent danger of death, or some other very grave evil, and such danger must be recognized beforehand in writing by the local Ordinary, if time permits. Such dangers are fire, flood, collapse of the building, war, invasion by soldiers, and the like, as also the case of a nun who has contracted a disease or become insane, and is a danger to the community.

## **4. Permission to leave Enclosure**

1. Permission is granted by the Sacred Congregation for a sufficient reason for cases when a nun is transferred from one monastery to another, or goes to found a new monastery or to recuperate her health, or supervise the building of a new monastery.

2. If there is a place on the roof for walking, it may be used if duly enclosed.

3. The Holy See will grant permission, if asked, to the

Superioress of a monastery to allow some of the nuns to work in the church, if no extern is there, and if it is locked.

4. Aspirants, on returning of their own accord to the world, or when dismissed, may leave the monastery without permission of the Holy See. The same applies to novices and those temporarily professed when their vows expire, or when legitimately dismissed.

5. Entrance within the Enclosure

1. The local Ordinary' or religious Superior or one delegated by either, when making local visitation may enter the enclosure, provided that at least one cleric or Religious of mature age accompanies him. Personal visitation must take place outside the enclosure at the grille.

2. The ordinary confessor, or the priest who, in accordance with law, takes his place, may enter the enclosure—due precautions being observed—to administer the Sacraments to the sick or to assist the dying. The precautions are that four nuns of mature age should, if possible, accompany the priest from his entrance into the enclosure to his return to the church. For confessions of the sick, two nuns are to accompany the confessor to the door of the cell of the sick nun, to remain near the open door of the cell, and accompany the confessor back to the door of the monastery. This permission is granted also to the extraordinary confessor, and to the confessor who may be summoned by a sick nun (c. 523).

3. A priest may, with due permission of the Holy See, enter the enclosure to preach either in the choir or in the chapter room, and the precautions described above are to be observed.

4. Those holding supreme civil authority in the state, their wives and retinue may enter the enclosure.

5. Cardinals of the Roman Church may also enter the enclosure.

6. The Superioress may allow physicians, surgeons, and others whose work is necessary, to enter the enclosure, provided due precautions are observed and the approval, at least habitual, of the local Ordinary is first obtained. In

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urgent necessity, this approval is presumed. The precautions to be observed are that such persons who are allowed to enter the enclosure must be proved to be of good repute and excellent character, that they are accompanied to their place of work by two nuns, and that no other nun is permitted to speak to them except those who must deal with them officially.

6. Enclosure protected

1.The keys of the enclosure must be in the possession of the Superioress, who will hand them to other nuns when necessary.

2.Any person who introduces within the enclosure another person without due permission, or anyone who admits another without permission, incurs excommunication simply reserved to the Holy See (c. 2342, 1).

3.Aspirants enter the enclosure with permission of the Ordinary. Other girls are not permitted to enter it for school purposes or any other reason without permission of the Holy See.

4.In the parlour where externs are permitted to speak with the nuns there must be double grilles, about twenty centimetres apart and fixed into the wall. There may be a revolving frame, if permitted by the constitutions.

5.The enclosure of nuns is subject to the vigilance of the local Ordinary, who has power to punish those who violate the law, even if they are exempt Religious. The Regular prelate also has supervision over the enclosure of nuns subject to his jurisdiction, and can inflict penalties for the violation of the law.

Note on Enclosure of Religious Congregations

In addition to what has been stated above, in respect of papal enclosure, the canons (c. 604) regulate the enclosure of the houses of Religious Congregations. In these houses also, the law of enclosure must be observed. No one of the other sex may be admitted, with the exceptions mentioned in the previous section, and others who may be admitted by

the Superior for a just reason. The rule mentioned above in section 2, paragraph 2, must also be observed. In special cases and for serious reasons, the bishop can safeguard the enclosure by censures, except in the case of an exempt clerical Institute, and he must always be careful to see that enclosure is observed and to correct any abuses that may arise.

**Note. On Enclosure of Nuns**

By the Apostolic Constitution *Sponsa Christi* (Nov. 21, 1950) P0P^ Pius XII introduced certain modifications in the life of nuns and the S.C. de Relig. in an Instruction (Nov. 23, 1950) laid down the Unes on which the Holy Father's enactment was to be carried out where solemn vows are taken.<sup>1</sup>

The principal points are the following:

1. Major and Minor papal Enclosures are distinguished. Major papal enclosure is observed in monasteries of nuns which are purely contemplative. It is under the discipline at present prevailing for such convents.

Minor papal enclosure is observed in convents where works are carried out. There must be a part set apart for the nuns in which the contemplative life is carried on. Any externs who intrude into this without authorization are excommunicated.

Outside this are the rest of the monastery bounds (*septa monasterii*) where the works are carried on. Nuns who leave the monastery bounds are excommunicated.

2. Federations of monasteries are recommended, and in some cases can be judged necessary.

3. Nuns must be ready when the necessities of the time urge to seek and accept works beyond those that are traditional. The S.C. notes that superiors are to see that a just price is exacted for such works.

<sup>1</sup> A.A.S., XLIII, pp. 5 ff, and 37 if.



## CHAPTER X

### EFFECTS OF RELIGIOUS PROFESSION (cc. 578-585)

1. Those who have taken temporary religious vows, enjoy all the spiritual favours granted to their respective Institutes to the professed of either solemn vows or perpetual simple vows. In the case of death, all the members, novices included, have a right to the customary suffrages (c. 567, §1).

2. Religious, even lay, and novices, enjoy the privileges of clerics (c. 614; cf. Treatise XIX, c. iv).

3. Solemn profession renders acts contrary to the vows invalid, if they can be nullified; simple profession renders contrary acts illicit but not invalid, unless it is otherwise provided.

4. Those who have made simple profession, whether temporary or perpetual, retain the proprietorship of their property and can acquire other property, unless the Constitutions rule otherwise.

5. Whatever a Religious acquires by his industry, or acting as a member of his Institute, belongs to the Institute.

6. Apart from Apostolic induits, what devolves on a Regular after solemn profession belongs to his Order, Province, or house, in accordance with the Constitutions of the Order, if the Order is capable of ownership; if it is not capable, it belongs to the Holy See.

7. One professed of simple vows may not gratuitously abdicate the dominion over his property by a voluntary deed of conveyance (*actus inter vivos*), nor may he alter the will already made in accordance with the canons (c. 569, §3) without permission of the Holy See, or in cases of urgency without that of his higher Superior, or if recourse cannot be made to the latter, without permission of the local Superior.

8. A parochial benefice is ceded one year after religious profession; other benefices three years after.

9. One who makes profession of perpetual vows ceases to belong to the diocese which he had as a lay person.

**Notes****1. Cession or disposition of property by a Religious**

The permission of the Holy See is required in order that a professed Religious may, as stated in canon 580, §3, change, in favour of his religious Institute, a cession or disposition of property, at least when it affects a notable part of his property (P. G. C. J., May 15, 1936).

**2. Religious profession by novice or postulant at the point of death**

The Sacred Congregation of Religious issued an Instruction (Dec. 30, 1922) in these terms:

In every Order, Congregation, religious society, monastery and Institute (even if, in the latter case, no vows are taken, but life is passed in common as in a Religious Institute), a novice or postulant who is considered by the doctor to be at the point of death, may be admitted to profession, consecration, or promise, according to their respective Institutes, even though the term of the noviceship or probation has not been completed. The following conditions are laid down:

1. The persons concerned must have begun the noviceship or probation canonically.

2. The competent Superior to act is either the major Superior, or the actual Superior of the house, or the delegate of either.

3. The formula to be employed is the one that is customary outside the case of illness.

4. The vow, if taken, must be taken irrespectively of time or perpetuity.

5. Such subject shall share in all indulgences, suffrages and favours which the professed Religious of the Institute receive, and shall obtain a plenary indulgence and forgiveness of all sins granted in jubilee form, and the profession, etc., has no other effect than the aforesaid graces.

6. If the subject die intestate, the Institute may not claim any property or rights that belonged to him.



7. If the subject recover before the end of the term of noviceship or probation, he shall be in the same condition as if he had made no profession, etc. Therefore, he may freely return to the world, may be dismissed, must complete the entire term of noviceship or probation determined by the Institute, even if it be more than a year, and when the whole period is completed, he must make a fresh profession, etc. (cf. Bouscaren, *Canon Law Digest*, I, p. 306, with acknowledgment).

## CHAPTER XI

### STUDIES IN CLERICAL RELIGIOUS INSTITUTES (cc. 587-591)

1. Every clerical religious Institute must have its approved house of studies, in which life in common must be observed perfectly, otherwise the students cannot be promoted to Orders; in default of such house, the canons allow the studies to be pursued in another Province, or Institute, or episcopal seminary, or public Catholic institution.

2. Students who are sent for their studies far from their own religious house may not reside in private houses, but must go to a house of their own Institute, or if that be not possible, to a religious Institute of men, or a seminary, or other pious house presided over by priests and approved by ecclesiastical authority.

3. During the course of studies, the Religious must be under the care of a spiritual director who has the qualifications of a master of novices.

4. After the preliminary lower studies, Religious must diligently study philosophy for at least two years and theology for at least four years, in conformity with the teaching of S. Thomas Aquinas.

5. No interference with studies may be allowed; the students may be exempted from some of the community duties, even from choir, especially during the night.

6. Priests who are Religious must, on the conclusion of their studies, be examined in the sacred sciences each year for five years, unless exempted by major Superiors, or engaged in teaching theology, Canon law, or scholastic philosophy.

7. In at least every formed religious house, conferences must be held at the least once a month on points of Moral theology and liturgy; and with the Superior's approval, a dissertation on dogmatic theology or allied sciences may be included. These conferences must be attended by all the professed clerics residing in the house who either are studying sacred theology or have completed the study of it, unless the rules of the Institute make other provision.



## CHAPTER XII

### THE PRIVILEGES OF RELIGIOUS (cc. 613-625)

1. Every religious Institute enjoys those privileges only which are contained in the common law of the Code and those which have been granted by the Apostolic See.

2. Religious Institutes no longer communicate their privileges to one another, but this rule is not retrospective, that is, the privileges communicated before the Code came into force (1918) still persist (P.C.C.J., Dec. 30, 1937).

3. Religious, even lay, and novices, enjoy the privileges of clerics (cc. 119-123). These privileges are, 1, that all the faithful owe reverence to clerics and would be guilty of sacrilege by doing them material injury, 2, that clerics enjoy the privilege of immunity from citation before civil and criminal courts with a few exceptions, 3, that clerics are not amenable to military service or public civil duties which are alien to the clerical state.

4. Regulars, whether men or women, novices included (except those nuns who are not subject to Regular Superiors) are exempt from the jurisdiction of the local Ordinary, as well as their houses and churches, except in cases provided for by law. Religious of simple vows are not so exempt, unless they prove exemption by virtue of a papal brief.

5. Regulars, even if exempt, must (unless they have a privilege to the contrary) observe the following prescriptions of the local Ordinary; they must recite the prayers ordered, celebrate Mass prescribed (c. 612), explain Christian doctrine (c. 1334), especially on holy days of obligation (c. 1345), observe what is enjoined for divine worship (c. 1261), join in public processions for some public cause, unless the Religious are strictly enclosed, or dwell more than three miles from the city (cc. 1291, 1292), observe the diocesan law of Mass stipends (c. 831, §3), refrain from holding divine service which would prejudice the catechetical instructions or gospel homilies in the parish church (c. 609, §3), contribute to the expenses of the diocesan seminary

the religious house is supported wholly on alms, or has a college annexed to it whose work is for the common good of the Church (c. 1356, §1).

6. There are certain things which Religious may not do without the approval of the local Ordinary, such as to erect a religious house in the diocese, expose the Blessed Sacrament publicly, establish pious associations, hold public processions outside their church except during the octave of Corpus Christi, write in periodicals, or publish books or periodicals.

7. Without prejudice to vows and particular constitutions, all Religious may use an induit granted by the local Ordinary to the diocese exempting from general law, such as the law of fasting and abstinence.

8. Mendicant Orders strictly so-called may beg alms within their diocese with their Superior's permission; not, however, outside the diocese without the written permission of the local Ordinary of that diocese. Other Religious of papal law require a special induit from the Holy See to beg alms, as well as the written permission of the local Ordinary unless the induit exempts them.

9. Other privileges, especially those of dispensing from vows, are granted to some religious Orders, and members of those Orders should use them with great prudence.

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## CHAPTER XIII

### ABANDONMENT OF RELIGIOUS LIFE (cc. 637-645)

#### SECTION 1. Lawful Abandonment

1. A Religious who has taken temporary vows may freely abandon the religious state on the expiry of the term of his vows. The Institute can, for sufficient reasons, exclude a Religious from renewing temporary vows, or from making perpetual profession, not, however, for ill-health, unless it had been fraudulently concealed or dissembled before profession. A Religious professed of even simple vows who becomes insane, even incurably, may not be dismissed, and his Institute continues to have the obligations it had in his regard which it had when he went insane (S. C. de Rel. Feb. 5, 1925).

2. An induit of exclaustation (temporary residence outside the cloister), and an induit of secularization (permanent exclusion from the Institute), can be granted only by the Apostolic See for papal Institutes, but by the local Ordinary for diocesan Institutes. When the Apostolic See has granted the former, the subject remains bound by the vows and the other obligations of his profession which are compatible with his state; he must cease to wear the religious habit, but enjoys the spiritual privileges of his Institute, and is subject to the local Ordinary in virtue of his vow of obedience. He is allowed what he needs for his support, but what he acquires belongs to his Institute.

3. When the Holy See has granted secularization of a professed Religious, he is entirely cut off from his Institute, he must put aside his religious habit, and is assimilated to a lay person in all that concerns Mass, and the use and administration of the Sacraments. He is freed from his vows without prejudice to the obligations annexed to major Orders if he had received them, but is not obliged, so far merely as his religious profession imposes an obligation, to recite the canonical hours. If he was in Sacred Orders

and had relinquished his proper diocese by taking perpetual vows, he may not exercise them until he has been accepted by a Bishop, who may subject him to a trial for three years, and if he wishes, for another three years, after which, if he has not been dismissed, he becomes incardinated in the diocese of the said Bishop. If such Religious was in minor Orders only, he is reduced to the lay state.

4.If the secularized Religious is received back by his Institute with Apostolic induit, he must make a fresh noviceship and profession, and his seniority is calculated from the date of his new profession.

5. A Religious who has left his Institute after the term of his temporary vows or by an induit of secularization, cannot claim compensation for services rendered to his Institute.

6.A female Religious who has been received without a do-wry and has left her Institute is to receive what is necessary for her decent maintenance.

SECTION 2. Unlawful Abandonment

1. An apostate from a religious Institute is one who, being professed of perpetual vows, whether solemn or simple, unlawfully quits the religious house with the intention of not returning, or who, having lawfully gone out of the house, does not return to it, intending to withdraw from religious obedience. This intention is presumed if, return being possible, it is not made within a month from departure, or if the intention to return is not manifested to the Superior within that period.

2.A fugitive from religious life is one who, without permission, deserts the religious house, but has the intention of returning.

3.Both apostates and fugitives are obliged to return at once to religious life and are not, during their absence, freed from vows or rules.

4.Apostates from religious life are excommunicated by censure reserved to the major Superior of the Institute, if the Institute is clerical and exempt. If the Institute is



## ABANDONMENT OF RELIGIOUS LIFE 381

either a lay one or not exempt, the excommunication is reserved to the Ordinary of the place. Furthermore, the apostate is excluded from legitimate ecclesiastical acts, loses all privileges of his Institute, and if he returns, may be punished in other ways (c. 2385).

A fugitive from religious life is deprived of any office he had, is suspended if in Sacred Orders, and may be punished in other ways on his return (c. 2386).

## CHAPTER XIV

### DISMISSAL FROM RELIGIOUS LIFE (cc. 646-672)

#### SECTION 1. Automatic Dismissal

Religious are to be considered legitimately dismissed from their Institute who have publicly apostatized from the Catholic faith, or who have absconded with a person of the opposite sex, or who have attempted or contracted marriage, or even the civil bond, as it is called. The higher Superior with his Chapter or Council may make the declaration of the dismissal; but this declaration is not necessary (P.C.C.J., July 30, 1934).

#### SECTION 2. Dismissal by Superior

In the case of Religious of temporary vows :

(a) When the period of temporary vows has elapsed, a Religious can be excluded from the renewal of the vows, or from final and perpetual profession, for a sufficient reason, but not in consequence of illness, unless before profession it was fraudulently concealed or dissembled.

(α) A Religious with temporary vows may be dismissed for grave reasons, arising either on the part of the religious body or of the Religious himself. A lack of the religious spirit which gives scandal to others is a sufficient cause for dismissal, if repeated admonitions and salutary penances have produced no results. The reasons for dismissal should be clearly known to the Superior who dismisses, though they need not be proved by a formal judicial process. But they should always be declared to the Religious himself, and he should be given full opportunity of replying to them. His replies must be submitted as they stand to the Superior who is to dismiss. The Religious may appeal to the Holy See against the decree of dismissal, and during this appeal the decree is of no juridical effect.

(f) A Religious of temporary vows, if legitimately dismissed by Superiors, is *ipso facto* released from vows, but



if a cleric in major Orders, he must observe their obligations; a cleric in minor Orders, when dismissed, is reduced to the lay state.

2. In the case of Religious of perpetual vows in a non-exempt clerical Institute, or lay Institute of men:

(a) Such a Religious can be dismissed only after three offences and a twofold admonition, with threat of dismissal if he has not amended his ways. In cases of diocesan Institutes, the matter must be referred to the local Ordinary. In the case of a papally approved Institute, the Superior General issues the sentence of dismissal which, however, requires the approval of the Apostolic See. The subject has the right to defend himself. The offences referred to must be canonical offences, i.e. some external and morally imputable violation of law visited by canonical penalty (c. 2195).

(f) For the dismissal of a female Religious of perpetual vows, there are required grave external reasons and incorrigibility. She, too, has a right to present her defence.

(r) If the Institute of the sister is diocesan, the case must be referred to the local Ordinary to decide on dismissal.

(d) In the case of nuns (*moniales*), the local Ordinary sends the dossier of the case to the Sacred Congregation for its decision, together with his own opinion, and that of the Regular Superior if the monastery is subject to a Regular Superior.

(e) In the case of other female Religious approved by the Holy See, the Mother General must send the dossier to the Sacred Congregation for its decision.

(f) In a case of grave scandal, or very serious imminent injury to the community, a guilty Religious can be sent from the religious house into the world at once by the higher Superior with the approval of his Council, and even by the local Superior with the consent of his Council and of the local Ordinary, if time does not permit of reference to the higher Superior. The Religious must put off the religious dress, but final judgment is given by the Holy See.

3. In the case of Religious of perpetual vows in an exempt clerical Institute, the following is the ruling:

## THE RELIGIOUS STATE

(a) A Religious of an exempt clerical Institute, professed of either solemn or perpetual simple vows, may not be dismissed without a judicial process, apart from automatic dismissal, or grave scandal, or imminent grave harm to the community', but even then the judicial process must be instituted; in the last two cases, sending the Religious from the religious house is not dismissal in the strict sense, but is rather a temporary' provision for the good name of religion (Wemz-Vidal, *Jus Canonicum*, III. n. 449, IV).

(b) The sentence of dismissal must be given by the supreme authority in the Institute or monastic Congregation together with the Council or Chapter, the latter consisting of at least four Religious, and the promoter of justice must also be nominated.

(c) The offences of the Religious must be serious external delinquencies (*delicta*) against general law or religious law, and admonitions and failure to amend must precede the judicial process.

(d) The delinquencies must be three in number and of the same species, or if of different species, must be such as to give evidence of a perverse and obstinate will in evil-doing, or may be one persisting delinquency which has become virtually threefold owing to repeated admonition disregarded.

(e) Admonitions must be two in number, one after each of the first two delinquencies, but if the delinquency is continuous, three days must intervene between the first two admonitions. Each admonition must be accompanied with a threat of dismissal.

(f) The Superior must add to his admonitions suitable exhortations and corrections, penances and other penal remedies, and must remove the guilty Religious from the occasions of relapse.

(g) The immediate higher Superior, after fruitless warnings and corrections, must send the dossier of the whole case to the supreme authority, who in turn must pass it on to the promoter of justice. When the case has been decided against the culprit, sentence of dismissal is given, but it must be referred to the Sacred Congregation for its



confirmation, and the said Congregation must be put into possession of all facts and details of the procedure.

**SECTION 3. Juridical status of a dismissed Religious of perpetual Vows**

1. A Religious professed of perpetual vows, if dismissed, remains bound by his vows, unless he has been dispensed from them, or unless the constitutions or Apostolic induits determine otherwise.

2. A cleric in Sacred Orders who has publicly apostatized, or absconded with a woman, or has attempted or contracted marriage, even civilly, or who has been dismissed for a delinquency punishable by infamy of law, or degradation, or deposition, is forbidden ever again to wear the ecclesiastical dress.

3. If, however, he was dismissed for delinquencies less serious than the aforesaid, he is suspended until absolved by the Holy See, he may be ordered by the Sacred Congregation to retain the clerical dress and reside in some determined diocese; the Ordinary must be informed of the reasons of dismissal. Failing obedience, he is deprived of the right to wear the clerical dress, has no claim on the Institute, and the Ordinary of the aforesaid diocese must send him to a house of penance, or entrust him to the care and vigilance of a pious and prudent priest. Failing obedience, he must be punished as stated above (n. 2).

4. The Institute must supply such a dismissed Religious with the means of livelihood—unless he can maintain himself—of which he will be deprived if he leads an unbecoming life, will be expelled from the house to which he had been sent, and deprived of the right of wearing the clerical dress.

5. If the aforesaid Religious has so lived during a year as to be regarded as truly amended, the Ordinary will seek absolution for him from suspension, and on absolving him will permit him to say Mass in the diocese and exercise other functions of the sacred ministry, always with opportune safeguards and restrictions.

6.The case of a Religious who was deacon or sub-deacon must be referred to the Holy See.

7. If the dismissed Religious has not been freed from his vows, he must return to his religious house; if, during three years, he has given evidence of complete emendation, the Institute must receive him back, and if, for grave reasons, it does not do so, the case must be referred to the Apostolic See. If the religious vows have ceased to bind, the dismissed Religious, on being accepted by a Bishop, must remain under his jurisdiction and care. If he does not find such Bishop, his case must be referred to the Holy See, which may grant him an induit for saying Mass and exercising other priestly duties. If he wishes, he may ask to be secularized.

## APPENDIX

### SECULAR INSTITUTES OF CHRISTIAN PERFECTION

An Apostolic Constitution, *Provida Mater Ecclesiae* (Feb. 2, 1947), lays down the rules which will apply to a new form of pious association of the faithful, to be termed Secular Institutes of Christian Perfection. These Institutes will have canonical status. The members of these Institutes must efficaciously aim at Christian perfection by those exercises of piety and self-abnegation which are customary in the case of those who aspire to that perfection, and must adopt the following means also :

1. They must make profession before God of celibacy and perfect chastity, confirmed by vow, oath, or consecration binding in conscience, according to the Constitutions of the Institute.

2.They must vow or promise obedience, so as to dedicate themselves by permanent obligation to God, and the exercises of charity or the apostolate, subject in all matters to their Superior.



3. By a vow or solemn promise of poverty, they must dispossess themselves of the free use of temporal goods, and use them only in a determined and limited way according to the Constitutions.

4. They must be united to their Institute by a bond that is permanent, or, if temporary, to be renewed after the determined interval; this bond is to be entire and mutual as between members and the Institute, and the latter must have the care of, and responsibility for, its members.

5. Though members do not adopt common life or live in the same house, there must be one or more common residences for the needs or utility of members, in which the Superior must reside, to which members are to come for receiving or completing their training, spiritual exercises and other purposes, where members can be received who, owing to ill-health or other reasons, cannot provide for themselves, or for whom it is not expedient that they should remain at home or in the private homes of others.

The rest of the Constitution deals with the establishment and government of the Institutes.<sup>1</sup>

<sup>1</sup> cf. also the decree and the Instruction of the Sacred Congregation of Religious, July 9, 1947 and March 19, 1948, and the *Motu Proprio* of Pope Pius XII, March 12, 1948.

# TREATISE XXI

## THE DUTIES OF CERTAIN CLASSES OF LAYPEOPLE

### CHAPTER I

#### GENERAL OBLIGATIONS

The undertaking of a public office entails certain duties. Society' has a right to be well and conscientiously served. A public servant of society is under an obligation to society of performing duties faithfully. If public office is freely undertaken, the obligations of a contract arise between the official and the State. But since no explicit contract exists between a public official and private citizens, it is the law which imposes the obligation on officials of acting justly towards the private citizen, where any official relationship is established between them. The official is, therefore, bound by commutative justice towards the citizen.

No one, except in rare cases to exclude one who is more unfit than himself, may undertake a public office for which he is unfit. If he does, he both deceives and injures others. One appointed to an office for which he is unfit should make himself fit for it, or see that the public work is done efficiently. If he cannot do either, he may not conscientiously take remuneration for his work.

Public officials are nothing less than the instruments of the Supreme Ruler to promote the temporal welfare of the people. They must, therefore, try to know what constitutes the public welfare, to be loyal in the fulfilment of duty, and to be impartial. The sacrifice of principle to political party is inexcusable. It is true that the alternative rarely presents itself, but when it does, justice to the people must be done.



## CHAPTER II

### THE DUTIES OF JUDGES

A judge is a public person lawfully appointed by the State to administer the existing law for settling disputes between litigants, and punishing offenders. He is to be guided in fulfilling his duties by the evidence adduced and by the law. He sometimes decides what is the genuine interpretation of a law that is somewhat obscure or difficult to apply. His ruling then becomes case-law.

2. It is obvious that a judge must have jurisdiction, possess a competent knowledge of the law, must arrange correct legal procedure, listen impartially to the evidence, and either pronounce judgment or direct the jury in accordance with the strictest justice to all parties. If he should act unjustly, with deliberate consciousness of injustice—a rare eventuality, we believe, in any country, except in revolutionary periods—he is bound to make reparation of the harm foreseen and done.

3. A judge has special obligations to prevent harm ensuing in the cases which are brought into his Court. If, then, he should wilfully neglect to prevent it, he is bound in justice, with greater or less inconvenience to himself according to the gravity of the harm, to repair the harm done. If a judge knowingly and wrongly pronounces sentence of acquittal in case of a legal fine he is probably not bound to make any reparation. He has offended against legal not commutative justice, since the State had no right to the fine until it was imposed. The contrary would be the case if he wrongly acquitted a man who was obliged to repair wilful damage to an individual citizen.

4. A judge is bound to pronounce judgment in accordance with law. He may indeed impose the maximum penalty, but he is not bound to do so; he may impose a penalty less than the maximum if he thinks it reasonable to do so. He may not pronounce judgment in accordance with an iniquitous or immoral law, that is, he may never enforce

by his judgment what is intrinsically wrong, or forbidden by the Church. A judge may not oblige a confessor to reveal matters of confession. He may grant a decree of judicial separation of married people, and even a decree of divorce in so far as the civil effects are concerned, not, however, so as to declare the marriage bond severed and the parties free to marry again. In applying the Divorce Law, a judge may be truly said to withdraw the civil protection from a marriage and to grant the parties (or the petitioner) the power of engaging in a fresh civil marriage. To do so is not intrinsically evil, though it may be a source of scandal; and only reasons of great moment can justify a Catholic judge in so acting or putting himself in a position where the law may require him so to act.<sup>1</sup>

It is admitted that a judge may impose a light fine, if legally incurred, though the law is unjust, in cases where there is no great scandal and with the presumed consent of the accused, for so small a penalty should be willingly undergone if the judge is practically obliged to administer the law.

5. When evidence is not conclusive, the defendant in a criminal trial may not be condemned. In civil actions, the judge is bound to favour that party whose right is the more probable. If there is equal probability, possession of a disputed right or chattel should usually favour the possessor. Where there is no question of possession of any sort, a judge may suggest a compromise or may settle in favour of either party. When a judge knows a defendant to be guilty but the evidence does not establish the guilt, he is bound to acquit him. When he knows a defendant to be innocent but the evidence appears to be against the defendant, he must use all diligence to establish the innocence of the party, but if the jury bring in a verdict of guilty, the judge will not be certainly acting wrongly if he pronounce sentence against the defendant. This matter has been the subject of discussion amongst divines and the better opinion appears to be that of Lugo who would allow the procedure except in cases when the legal penalty was exceedingly severe, such

<sup>1</sup> cf. Papal Allocution to Catholic Jurists, p. 392.



as death or long imprisonment.<sup>1</sup> In cases of fines, the State, it is maintained, could deprive a defendant of money for the sake of the common good, and the legal procedure of passing sentence in accordance with evidence should be upheld. In such minor matters, the defendant ought not to be unwilling to suffer pecuniary loss. But he could reasonably object to the loss of his life or liberty.

6. A judge cannot demand any payment for giving a just sentence. Should he do so, he is bound to restitution. If he demand payment for giving an unjust sentence, or for interfering with justice in any way, he is obviously sinning, and before giving sentence he would be bound to restore what he had exacted. But if he had fulfilled his part of this dishonest bargain, it is not certain that he would be obliged, in justice, to restore the bribe. The contract was an immoral one and has to be judged by the principles of such contracts already set forth. Gifts of little value offered by litigants to a judge may be retained. If they are of great value they may not be kept if sentence has not been given, for by keeping them he exposes himself to the grave danger of being influenced by them. If sentence has been given, the        may be retained. The above principles are stated without reference to the law against bribery, the penalties against which are rightly severe. Canon law also forbids the acceptance by, or the offering of gifts of any sort to ecclesiastical judges (cc. 1624, 2407). In this country, judicial corruption has been extremely rare; there has been no legislation in regard to judicial bribery with the exception of the Statute of 1384 (repealed 1881). There is universal and perfect trust in the purity of the judiciary. It may be maintained, however, that judges step outside their province when they strongly recommend a woman who petitions for a decree of judicial separation to give his freedom to the guilty husband by petitioning for divorce. The suggestion is monstrous, in that it puts a premium on a husband's infidelity.

7. A just sentence has the binding force of law in con-

<sup>1</sup> *Lugo, de Just.*, d. 37, n. 43. cf. Allocution of Pope Pius XII to Italian Catholic Jurists, Nov. 6, 1949> P. 392.

science to this extent, that the condemned may not offer active resistance to those appointed by the State to carry out the sentence. If there is a doubt as to its justice, the presumption will be in favour of the judge. If the sentence is manifestly unjust, it does not bind the conscience, but after appeal, if the sentence is upheld, or if appeal is not possible, public peace usually requires obedience and submission to injustice.

**Note on the Duties of Jurymen**

The duties of arbitrators and jurymen are similar to those of judges.

If a jurymen knows for certain that a defendant is innocent, though the evidence appears sufficient to convict, he has not the same liberty' as a judge of expressing his opinion as to the defendant's guilt. Since he knows of the innocence of the party', the evidence is obviously unconvincing. If a jurymen knows of the guilt of a defendant but the evidence in Court was not sufficient to convict, he may certainly return a favourable verdict. He is probably bound to do so. But when he is certain that acquittal will lead to great harm to the State or to public disorder, the jurymen in question may return a verdict against the defendant.

**Papal Allocution to Catholic Jurists in Rome, Nov. 6th, 1949;  
A.A.S., 1949, pp. 597-604**

The following points in the papal allocution are of great importance for the guidance of Catholic judges.

1. In the case of every sentence, the principle is valid, namely, that the judge cannot purely and simply repudiate his own responsibility for his decision, and refer it entirely to the law and its authors. . . The judge who by his decision applies it to a particular case is the joint cause of the effects, and jointly responsible for them.

2. A judge can never by his decision oblige anyone to commit an act that is intrinsically immoral, that is, one which is of its nature contrary to the law of God or of the Church.

3. He cannot in any case expressly recognize or approve of an unjust law which, in any event, would never constitute the basis of a judgment valid in conscience and before God. Therefore he cannot pronounce a penal sentence which



would be equivalent to such an approval. His responsibility would be still graver if his sentence occasioned public scandal.

4. But not every application of an unjust law is equivalent to its recognition and approval. In this case, the judge may—and perhaps sometimes must—let an unjust law take its course, when it is the only means of preventing a much graver evil. He may inflict a penalty for the violation of an unjust law, if the penalty is of such a nature, that he who is subjected to it is reasonably disposed to submit to it, in order to avoid that harm or to secure a benefit of much higher importance, and if the judge knows, or can prudently presume, that the punishment will be willingly accepted by the transgressor from higher motives. In times of persecution, priests and laymen have often allowed themselves, without offering resistance, to be condemned even by Catholic magistrates to fines or deprivation of their liberty for the violation of unjust laws, when thereby it was possible to preserve for the people an upright magistracy, and to avert from the Church and the faithful much more dreadful calamities.

5. Naturally the graver the consequences of a judicial sentence, the more important and general must be the good to be preserved, or the harm to be averted. There are, however, cases in which the idea of a compensation by the attainment of a higher good, or the preventing of greater evils, can have no application, as in a death sentence.

6. In particular, the Catholic judge cannot, except for reasons of great moment, pronounce a decree of civil divorce (where divorce exists) from a marriage that is valid before God and the Church. He may not forget that such a decree is in practice not restricted merely to civil effects, but, in fact, rather conduces to make people think erroneously that the actual bond has been severed, and that the new one is valid and binding.<sup>1</sup>

<sup>1</sup>cf. *Periodica*, March 15, 1950, pp. 1—33.

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CHAPTER III

THE DUTIES OF PLAINTIFFS, DEFENDANTS  
AND WITNESSES

Action at law must be taken for the public good, or when contract or office obliges one to do so, or when Superiors enjoin it, or when the innocent should be defended, if in the last case this can be done without serious personal inconvenience, for the obligation is one of charity, not of justice. Prosecution may not be undertaken when greater evil than good would ensue, or when the plaintiff has no moral certainty of the guilt of the defendant.

2. According to canon law there is an obligation to denounce clerics or Religious who become members of Masonic or similar societies (c. 2336, 2), and a confessor who is guilty of technical solicitation (c. 2368, 2). According to church legislation (c. 1935), it is open to any of the faithful to prosecute in order to obtain compensation or reparation of harm done. Indeed, there is an obligation of prosecution when the Faith or religion is imperilled, or in case of any other public imminent evil.

3. The defendant in a criminal trial is not, in English law, cross-examined unless he wishes to give evidence. In canon law he may be cross-examined, but is not bound to confess his crime (c. 1743). The defendant may always deny charges against himself, since this is universally understood as denying the obligation to incriminate himself, or to acknowledge guilt until it has been fully established by complete legal process. A defendant may, in self-defence, reveal the hidden crimes of any of the witnesses, if necessary, and in order to prove the untrustworthy character of their evidence. If not necessary or if immoderate, such revelation would be contrary to justice and charity. It would always be sinful to calumniate a witness, even in self-defence.

4. A condemned culprit may escape if he can, for he is probably only bound not to offer active resistance to the infliction on him of a just sentence. He may even break



out of prison but without doing injustice or bodily harm to his gaolers. Others, not State officials, may help him to do so. But as gaolers are bound by contract to keep custody of their justly sentenced prisoners, it would be sinful to bribe gaolers to induce them to violate their contract. If the sentence is an unjust one, a prisoner may attempt to escape even with violence and may resist recapture. But his violence must be proportionate to the situation and may not exceed reasonable limits.

5. One is obliged to give evidence in a Court of Law when justly commanded to do so, or when serious harm can be prevented either to the State or to an innocent party or to one who has been wronged. The good of the State and of religion takes precedence of other goods, and the obligation to safeguard that good is grave ; it will not, however, be a grave obligation in case of serious inconvenience. There is no obligation to give evidence merely for the punishment of a past crime that is not producing present harm. There is no clear obligation to reveal the name of a culprit when an innocent party is unjustly sentenced without any fault of the real culprit. But if the real culprit is the cause of an innocent man's suffering, there is at least an obligation of charity to do so, and possibly one in legal justice.

6. A witness is bound to tell the truth for truth's sake and by virtue of the oath taken and by obedience to lawful authority. He is not bound to incriminate himself, nor to reveal confessional secrets, nor, with the exceptions dealt with under professional secrets, to reveal what he knows in his professional capacity.<sup>1</sup> He may deny all knowledge of the matter in these cases, just as he may deny his own guilt. A witness who has perjured himself sins against his oath. There is such a great amount of peijury practised in the Law Courts that the oath appears to be of very little value for purposes of arriving at certainty. The violation of oaths sits lightly on many people who do not realize how serious it is. Moreover, one who bears false witness against another and thereby causes injury is bound to reparation, if he has effectually caused foreseen harm to that other. He must

<sup>1</sup> *Sec supra*, vol. II, p. 422 sqq.

also withdraw his falsehood unless he would suffer more harm than the harm he inflicted. Even if he do not withdraw it, he is still bound in justice to repair the harm he has done if he can do so. His obligations are very far-reaching, for they may extend even to the family of the innocent person who has suffered from the perjury', and to the heirs of the sufferer. The obligations of justice are insistent so long as reparation has not been made and can be made ; they are debts which no length of time extinguishes. When a witness has given false evidence inadvertently, he is bound in justice to prevent ensuing harm to others, but not to his own greater consequent harm.



## CHAPTER IV

### THE DUTIES OF ADVOCATES

The first duty of an advocate is to understand the law and its application to the case. He enters into a contract with his client and is, therefore, under obligation of strict justice. In criminal cases, he may always defend the accused by all lawful means, for he may do what the accused is allowed to do. But he may not employ unjust methods, such as the falsification of documents, calumniating the plaintiff, admitting false witnesses. He may not attack fundamental truths, as by maintaining that a man is never free under the impulse of passion. A case would be made out in the Courts for every murderer that his impulse was overwhelming. A barrister may try to get every allowance made for his client in the minds of the jury, but not by alleging what is untrue.

2. An advocate may undertake the defence of civil actions not likely to succeed, but he may not undertake to defend what is patently unjust, for if he succeeds he will be bound to repair the foreseen harm he has done. If the case of his client is weak, the advocate must tell him so. If, in the course of evidence, a client's case is seen to be patently unjust, counsel is obliged to throw it up, for he may not defend injustice and injure the character of an innocent person.

3. In this country, an advocate may undertake a case for the judicial separation of husband and wife, if the reason is a just one.<sup>1</sup> He may defend a case against a plaintiff who petitions for divorce, though such matrimonial cases strictly belong to the Church. He may undertake a case for declaration of nullity in the Courts if the competent ecclesiastical Court has already issued a decree of nullity. He may also undertake a case for legal divorce, not, of course, with the intention of having the bond of marriage dissolved,

<sup>1</sup> S.O., Dec. 19, 1860 (cf. *supra*, vol. IV, p. 238).

but of obtaining the civil effects of legal divorce for his client. In the case of Catholics petitioning for civil divorce, the local bishop's permission must previously be obtained, for scandal has to be prevented. It will be prevented by announcing in some public way, as in the Courts or in the Press, that Catholics do not admit the possibility of divorce in the strict sense. All that they petition for is the civil effect of what is called divorce.



## CHAPTER V

### THE DUTIES OF DOCTORS AND SURGEONS

Doctors and surgeons must have a reasonably competent knowledge of their respective sciences, though the field to be covered is so vast and through progressive research is becoming so extensive that they cannot be competent in every' branch of their sciences. They, like other professional men and women, must keep abreast of modern research in their subject. In treating or dealing with a case they must have ordinary skill and use ordinary care, but they cannot be expected to have a specialist's knowledge of every case nor to exercise quite extraordinary skill.

2. Where a safer remedy is available, it must be employed; it is a matter of contract and justice. It is, therefore, not permissible to carry out experiments on the sick, when the effect of them is unknown, even if the sickness is imminently fatal. Patients cannot give permission for mere experiments to be made on them with risk to life or to the shortening of it. Recourse may be had to dangerous remedies or dangerous operations with only a remote chance of success, and with the consent of the patient, if nothing better can be done and the patient will die immediately if nothing is done.

3. When a Catholic doctor is called to a difficult case of childbirth, and if, according to his text-book, craniotomy is indicated, he may not perform that operation. If the patient or husband ask for another attendant who will treat the case, a Catholic doctor may send for him.

4. The administration of drugs to ease pain is, of course, permissible, and doctors are well aware of the duty of caution in administering them or in leaving them with a patient who cannot be implicitly trusted to use them carefully. To take away consciousness before death, if the person is clearly not spiritually prepared, is a grievous sin against charity. Every effort should be made to leave sufficient consciousness that a dying patient may be able to commune with God in the last moments of life. No one can definitely

state that a dying person is spiritually prepared to die and therefore, we believe, it is never permissible to destroy consciousness with drugs so that death may supervene in the unconscious state.

5. It is a matter of charity to warn a patient or his relatives of impending death so that all preparations, both for spiritual and for temporal issues, may be made. The medical attendant should certainly see that Baptism is administered to a child likely to die in the womb. He needs the permission of no one to do this. If he fear opposition, he should certainly baptize secretly. He has no obligation by contract to allow a child to be deprived of the Vision of God. But he should prevent, if possible, a repetition of Baptism.

6. A doctor's visits may not be continued beyond reasonable limits if they are useless ; of course they may be useless medically though valuable psychologically. He may then continue to make his ordinary charges. Charges for medical attendance necessarily vary according to the social condition of a patient. If a doctor charges less to the poor than would ensure him a decent living, he may charge the well-to-do what would maintain him in his position, and enable him to continue to be a competent attendant, regard being had to his own social position, to outlay on his own education, to purchase of necessary books and instruments, since his continued and even increased efficiency is an asset to the State.

7. In times of plague a doctor would be obliged to fulfil contracts already freely and knowingly entered upon, but apart from contract, he could rarely be obliged in charity to undertake a case to the great risk of his own life. A doctor is under some obligation, usually not grave, to give his services to some of the poor for slight or even no remuneration. But the present system of panel doctors and access to free dispensaries have practically done away with his obligations, except in very rare cases where a poor person is in very urgent need of medical help. This system is now replaced by the National Health Act, and the poor can get gratuitous medical treatment.



## APPENDIX 1

### A HOSPITAL CODE

*{Approved by ecclesiastical authority and reproduced here  
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#### A. Birth Control.

In no circumstances may artificial or unnatural methods of prevention of conception be advised. Thus it is forbidden to recommend the use of mechanical or chemical devices to men or women or to advise such a method of contraception as *coitus interruptus*.

#### B. Sterility—Examination of the Male.

In no circumstances may any morally wrong method of obtaining a specimen of the seminal fluid be used or advised. Thus it is forbidden to advise masturbation or the use of a condom during coitus in order to obtain a specimen for any purpose whatsoever.

#### C. It is Never Permissible Directly to Kill a Fetus or Embryo.

Operations involving the intentional and direct destruction of fetal life are therefore forbidden.

Among these are:

1. Dilatation of the *os uteri* during pregnancy and before the fetus is viable.

2. Introduction of sounds, bougies, or any other substances within the *os uteri* during pregnancy and before the fetus is viable.

3. Direct induction of labour by any means whatsoever before the fetus is viable. Neither Eclampsia nor Hyperemesis Gravidarum constitute an exception to this rule.

4. Curettage of the uterus during pregnancy.

5. Craniotomy of the living child.

6. X-Ray Therapy and Radiotherapy, in the absence of their immediate and indispensable need for the preservation of maternal life as a treatment of the mother's organism alone, are forbidden before delivery in all cases of actual or questionable pregnancy.

The fetus may be considered viable after twenty-eight weeks. If the fetus is known positively to be dead, operations for emptying the uterus may be performed.

Where a pregnant mother dies before delivery, an effort must be made in all cases to deliver the child, and if it is in danger of death to ensure its baptism. Indeed, all products of conception (fetus or embryo) are to be baptised at least conditionally.

#### D. Sterilization or Mutilation.

All operations involving the sterilization or mutilation of men or women are forbidden, except where such are indicated as a necessary operation for the removal or cure of diseased structures.

This includes such operations as:

1. Removal of undiseased ovaries. In all cases of removal of diseased ovaries in women of child-bearing age a portion of one ovary, if healthy, should be left, where practicable.

2. Removal of an undiseased Fallopian tube directly. In this connection it is to be noted that where a rupture occurs or threatens to occur in tubal pregnancy, endangering the mother's life, the affected part of the tube (or the whole tube, if the whole tube is seriously affected and its excision is necessary) may be removed, although it contains an embryo or fetus, and the embryo must be baptized.

3. Section of an undiseased Fallopian tube, and operations which result in obstructing the lumina of undiseased Fallopian tubes.

4. Hysterectomy in women of child-bearing age where alternative treatment that leaves the woman capable of child bearing is possible.

5. Anterior fixations or ventrofixations in women of child bearing age, which would prevent child-bearing.

6. The sterilization and castration of male patients except when performed for the removal or cure of diseased structures.

#### E. Dying Patients.

A priest should be sent for at once in the event of any Catholic patient appearing to be in imminent danger of death, either through severe illness or injuries, and, pending the arrival of a priest, treatment should be directed to ensure that the patient, while being relieved of avoidable suffering, should be maintained in such a condition as to



be able to take a conscious part in the reception of the Last Sacraments.

F. Euthanasia.

In no circumstances may treatment be given to patients with the primary purpose or result of relieving their suffering by ending or shortening their lives.

In the event of advances in Surgery and Medicine rendering permissible in accordance with Catholic teaching any of the prohibitions of this Code, it may be amended accordingly.

## APPENDIX 2

## Ecclesiastical Burial (cc. 1203—1242)

**General Principles**

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The bodies of the faithful are to be buried ; cremation is reprobated. Such is the general prescription of law. Cremation is not forbidden in times of pestilence, or on the battlefield, for the purpose of the law is to safeguard Christian faith in bodily resurrection, and the Church does not urge such a law as this, when no principle is at stake, to the manifest harm of her children. It is not permitted to accede to a request expressed in a last will that the body of the deceased should be cremated ; any such disposition embodied in a will, a contract, or any other instrument (legal or otherwise) is to be considered as non-existent. Where (and if) civil law enforces cremation, the customary prayers may be recited over the corpse, but it is forbidden to go to the place of cremation.<sup>1</sup> By ecclesiastical burial is meant the carrying of the corpse to the church, performing the customary funeral service there, and the interment in a place legitimately set aside for the burial of the faithful.<sup>2</sup>

**The Cemetery**

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1. The cemetery in which the bodies of the faithful are to be buried must be blessed. Corpses are not to be buried in the church or crypt—if devoted to divine worship—except those of the Pope, Cardinals, royal persons, residential bishops, abbots or prelates *nullius*.

2. When a church (or parish) cannot have its own cemetery, the municipal cemetery is to be blessed if Catholic burials are in the majority, or at all events, the part assigned to Catholic burials is to be blessed. Failing this, each grave is to be blessed on the occasion of a burial.

3. When possible, separate parts of a cemetery should be reserved for the burial of priests and clerics, which should

<sup>1</sup> P-F., Jan- 26, 1911 ; nor may the ashes be buried in consecrated ground (Holy Office, June 19, 1926).



have a more becoming site than the rest. The graves of priests should be separated from those of clerics of lesser rank. The bodies of little children should also, as far as possible, be buried in a place set apart for them. In this country, Catholic burials took place, and now sometimes take place, in the cemeteries of the Established Church. No place is specially set aside for them. Legal notice must be given to the incumbent, who, without it, is entitled to forbid the burial in his cemetery. A Catholic mortuary chapel may be erected, with due permission, on ground set apart for Catholic burials. Where common mortuary chapels exist, Catholic services are held in them by arrangement with the authorities.

4. In the selection of epitaphs, inscriptions and ornamentation, ecclesiastical Superiors are warned not to allow any suggestion contrary to faith or piety. Simplicity, too, should be the predominant characteristic of tombs, whose architecture should not be flamboyant and worldly. The dead are better helped by prayers and Masses than by extravagant mausoleums. The practice of visiting the graves of relatives on anniversaries and of placing wreaths of flowers on them, and praying by the grave, is a fitting reminder of the soul's immortality, but the pastor should urge his people to add their prayers to floral offerings, and not to be ashamed to kneel by the side of the grave.

5. No corpse should be buried until after such interval as may guarantee the certainty of death. This is especially to be observed in cases of sudden deaths, not due to accident, when the interval should be somewhat longer than in cases of death after lingering sickness. If the need for exhumation should arise, permission is to be first obtained from the civil authority and the local Ordinary ; the latter is not to grant permission if the body cannot be clearly distinguished from other corpses.

#### Manner of Burial

I. Before burial, the corpse must be taken, apart from serious reasons to the contrary, to the church which was the parish church of the deceased, unless other legitimate



arrangements were specified before decease, for Catholics may determine the church of their obsequies. If the deceased belonged to several parishes at the time of death, the body is to be carried to and the service is to take place in the church of the parish where the death occurred. If death took place in another parish, the body is to be brought to and the service is to take place in the parish church of the deceased nearest to the place of the death, if it is possible to do so, otherwise the body is to be conveyed to the church of the place where death occurred. The family or heirs of the deceased may have the body conveyed to the parish church of the deceased at their own expense.

2. The parish priest of the deceased has the right and duty—apart from a case of necessity—of conducting the body to his church, and if the death took place outside the parish, it is the right of the aforesaid pastor after notice to the parish priest of the place of death, to conduct the body to his own church if that can be done without undue inconvenience. The family of the deceased cannot invade the rights of the legitimate pastor, as indicated above, but they may invite others as well as the clergy of the parish to attend the funeral, but societies or insignia clearly opposed to the Catholic religion are not permitted. The clergy are not permitted to carry the body of a deceased lay person, except, of course, in necessity. When a pastor has to pass through another parish to conduct the body to his church he requires no permission to do so, and may use stole and cross.

3. The body is to be brought to the church as a normal procedure, though in this country it is not uncommon for the body to be taken from the home immediately to the cemetery chapel, where the Chaplain performs the funeral service. In such cases, many priests are accustomed to recite a short service at the home of the deceased before the funeral proceeds to the cemetery.

4. The cemetery for burial is the cemetery of the church in which the service was held, unless the deceased or the family expressed some other wish. The body is to be taken to the burial place of the family, if such exists, and if it is

possible without inconvenience, unless a contrary wish was expressed legitimately (c. 1229). The body of a deceased married woman should be buried in the sepulchre of her husband unless she expressed, before death, some other wish ; if she was married more than once, the body should be buried in the sepulchre of the last husband whom she survived. Apart from necessity, the priest who performed the service, or his delegate, has the right to conduct the body to the grave. At a funeral, it is not allowed to preach a funeral panegyric, except with permission of the Ordinary who may demand to see the manuscript beforehand.<sup>1</sup>

After the burial, the priest who conducted it should inscribe in the register the name and age of the deceased, the names of the parents, the name of wife or husband if the deceased was married, the date of death, the Sacraments received before death, the name of the priest who administered them, the place and date of burial.

5. Catholics have the right to determine their place of burial and the church in which the service is to be held ; this freedom of choice is given to a wife independently of her husband's wishes, and to children over fourteen years of age independently of their parents' wishes.

In the case of those not arrived at puberty, the choice lies with their parents or guardians, not with the children, nor have Religious who are professed—unless they are bishops—any choice. The legitimate choice may extend to any church where funeral services can be held, even the church of a Religious Order, but not the church or chapel of nuns, unless for a woman who had lived habitually within the convent. The canons relating to funerals warn Religious and the diocesan clergy not to interfere with this freedom of choice.

6. All baptized persons who are not specially banned by the Church, as also even unbaptized catechumens where defect of Baptism is not culpable, may be given ecclesiastical burial. Certain categories of persons may not be given ecclesiastical burial. These are : The unbaptized (except catechumens, as stated) and the following persons, unless

<sup>1</sup> S.C. Consist., June 28, X917.



they allowed some signs of repentance before death, namely, notorious apostates, heretics, schismatics, Masons and those belonging to similar societies, those excommunicated or interdicted by name, deliberate suicides, duellists who died during a duel or from a wound received in a duel, persons who gave orders to have their bodies cremated, and persisted in that resolve, even though cremation did not take place, and manifest public sinners who die without any sign of repentance after a life of notorious sin, or who die in the act of grievous sin, or who obstinately refused the Sacraments in their last illness in the presence of witnesses. But in cases of doubt, the Ordinary should be consulted if there is time; if the doubt persists, the benefit of the doubt may be given to the deceased, if that can be done without scandal. For those who are refused ecclesiastical burial, the exsequial requiem Mass may not be celebrated nor any other public funeral rites. The burial of such banned persons is to take place in a cemetery distinct from that where the faithful are buried.

#### Funeral Dues

The amount of funeral offerings is to be determined by the local Ordinary after consultation with the cathedral Chapter, and, if he wishes, with the deans of the diocese and pastors of the episcopal city. The family of the deceased has the right to determine which of several diocesan categories of funerals shall be given. It is strictly forbidden to exact more than the fixed diocesan rate. The parochial portion of the funeral dues fixed by diocesan regulation is to be taken only from the offerings prescribed by the diocesan regulation for the conduct of the body to the church and for the funeral services.<sup>1</sup> When the parish church of the deceased and the church where the funeral took place belong to different dioceses, the parochial portion is to be reckoned in accordance with the regulations of the diocese in which the funeral service was held. If the first solemn funeral service does not take place at the time of the actual burial, but later, in another parish, the pastor of the deceased

<sup>1</sup> The parochial portion of funeral dues is the amount that has to be paid to the parish priest of the deceased out of the sum total that is paid on the occasion of a funeral in a parish other than the proper parish of the deceased.

may demand the parochial portion, if this solemn service takes place within a month after burial. The poor are to be buried without charge and with all fitting decency and in accordance with the ritual and diocesan statutes.

When the funeral of a parishioner takes place elsewhere than in his own parish church, the pastor of the deceased has a right to the parochial portion, provided the deceased belonged only to his parish, and the body could have conveniently been taken to that parish church. If the deceased belonged to several parishes, to the parish churches of which the body could conveniently have been taken, and was buried elsewhere, the different pastors have a right to a share of the funeral dues. The parish of a person's quasi-domicile is to be considered, in respect of funeral dues, as that person's proper parish.<sup>1</sup>

#### Lights in Cemeteries

Electric lights and lamps may be kept alight over the graves of the dead in blessed cemeteries, so as to be not only a tribute of sympathy, or a solace to the living, but a witness to and a profession of Catholic faith in the resurrection of the body and life everlasting.<sup>2</sup>

#### Cremation

The Church forbids cremation as the normal method of disposing of a dead body (c. 1203), but does not forbid it in cases of necessity, as war, plague, earthquake. It is not allowed to carry out any disposition in a Will or contract which enjoins cremation (c. 1203). One who ordered his body to be cremated is to be deprived of Christian burial unless he retracted his wish before death (c. 1240). Those who disobey these rules of law are excommunicated or interdicted (c. 2339). Pope Boniface VIII forbade the evisceration of corpses, or the scraping of the flesh from the bones and boiling them, and cutting up corpses, on the plea of easier transport. The obvious reason why cremation is forbidden is that the body during life was sanctified as a temple of the Holy Ghost and a tabernacle of the Holy

<sup>1</sup> S.C.C., June 9, 1923.

<sup>2</sup> S.R.C., Oct. 30, 1922.



## 410 tCULtMABUCAL BURIAL

Eucharist, and so long as it remains in the form of a human body, even though mutilated, it has to be treated with respect. Furthermore, cremation is calculated to disturb the faith of simple folk. If, under exceptional circumstances, the Church granted permission for, or tolerated, cremation, the faithful would be instructed correctly in the matter (cf. The Instruction of the Holy Office, June 19, 1926).

### Pall Bearers

Clerics are forbidden to carry the coffin containing the corpse of a lay person (c. 1233, § 4). The body of a deceased Bishop or priest is to be carried to burial by priests vested in cassock and surplice.<sup>1</sup>

### Burial of Unbaptized Infants

Though a child that was born alive and died before baptism should not be given ecclesiastical burial (*JRit. Rom.*, tit. vi, c. 2), an unborn dead child, even if not baptized in its mother's womb, may be buried with its mother's corpse ; so, too, may dead infants be buried who have been extracted from the mother's womb.

### Funeral Mass

In funeral services, if Mass is celebrated it should always, except in the case of the poor, be sung, and the growing practice of having a low Mass even when the funeral takes place with some external pomp is reprobated.<sup>2</sup>

<sup>2</sup> S.R.C., May i, 1942.

## APPENDIX 3

### ARTIFICIAL INSEMINATION AND USE OF INFERTILE PERIOD

1. In a Papal Allocution to Catholic doctors, Rome, Sept. 29, 1949, the Holy Father, after condemning artificial insemination in and out of marriage, made the following statement:

“Though one cannot exclude *a priori* new methods merely because they are new, nevertheless in what concerns artificial fecundation one must not only be extremely reserved, but it must be entirely rejected. In saying this the use is not necessarily to be proscribed of such artificial methods as are designed solely to facilitate the natural act or to procure the fulfilment of the proper purpose of the natural act which has been normally completed.”

2. From the address of the Holy Father to the Italian Catholic Union of Midwives, Oct. 29, 1951.<sup>1</sup>

“To reduce the cohabitation of man and wife and the conjugal act to a mere organic function for the transmission of seed would be to reduce the home, sanctuary of the family, to a mere biological laboratory. For this reason in our address of Sept. 29, 1949, to the International Congress of Catholic Doctors We formally excluded artificial fecundation from matrimony. For the conjugal act in its internal structure is a personal act, a simultaneous and immediate co-operation of the spouses, which by the very nature of the agents and the character of the act is the expression of the reciprocal gift which, according to the words of Scripture, unites them ‘in one flesh’.”

### The Infertile Period

From the Holy Father's address to the Catholic Union of Midwives, Oct. 29, 1951.<sup>2</sup>

“The matrimonial contract, which confers upon the

<sup>1</sup> A.A.S., XLIII, p. 835.

<sup>2</sup> A.A.S., XLIII, pp. 835-6. cf. *Clergy Review*, XXXVI, pp. 389-90.

parties the right to satisfy the inclination of nature, constitutes them in a state of life, the state of matrimony. Now upon the parties who make use of this right by the specific act of their state, nature and the Creator impose the function of providing for the conservation of the human race. This is the characteristic contribution from which their state of life derives its peculiar value: *bonum prolis*—the blessing of offspring. The individual and society, the people and the nation, the Church herself, all depend for their existence, in the order God has established, upon fertile marriage. It follows from this that to enter upon the state of matrimony, to make constant use of the faculty proper to it and only in matrimony allowable, and on the other hand constantly and deliberately, and without a serious reason, to shirk the primary duty it imposes would be to sin against the very meaning of married life.

“From the obligation of making this positive contribution it is possible to be exempt for a long time, and even for the whole duration of married life, if there are serious reasons, such as those often provided in the so-called ‘indications’ of the medical, eugenical, economic and social order. It therefore follows that the observance of the infertile periods may be *liât* from the moral point of view; and under the conditions mentioned it is so in fact. Nevertheless in the absence—according to a reasonable and equitable judgment—of similar serious reasons, whether personal or due to circumstances, the intention of married people to avoid habitually the fecundity of their union, while continuing to give full satisfaction to their sensual desires, can be based only on a false outlook on life or on motives that are foreign to true ethical standards.”



## APPENDIX 4

### CHAPLAINS OF THE FORCES AND MISSIONARIES OF EMIGRANTS

**The Decree erecting the Vicariate of the armed forces of Great Britain was issued by the Sacred Consistorial Congregation on Nov. 21, 1953.<sup>1</sup> The following are its provisions of more practical importance :**

**Subject to the jurisdiction of the Ordinary of the forces are:**

**(1) Priests, secular and regular, legitimately appointed military chaplains for the spiritual care of the forces of Great Britain.**

**(2) All the faithful serving in the Land, Sea and Air forces of Great Britain.**

**(3) The households of those mentioned under the preceding number, i.e. wives, children, relatives and servants, who accompany them outside their native territory, provided they reside with them.**

**(4) All the faithful of both sexes, whether religious or lay, who habitually reside in schools, youth hostels, hospitals and other establishments of that nature which are reserved to the armed forces.**

**(5) All the faithful of both sexes who dwell in regions or villages reserved exclusively to members of the forces and their households.**

**(8) The duties which the Code assigns to Vicars General are to be performed by the three Major Chaplains in regard to the forces assigned to them respectively.**

**(9) ... As regards matrimony of subjects of the Ordinary of the Forces the law of canon 1097,§2 is to be strictly observed, and everything preceding or following marriage which the law prescribes is to be exactly carried out.**

**(11) When the Office of Ordinary of the Forces is vacant,**

<sup>1</sup> A.A.S., XLVI, p. 144.

unless other provision is made by the Holy See, the duties of that office devolve on the Major Chaplain who has precedence in conformity with canon 106,§3.

Rules and Faculties for Missionaries of Emigrants<sup>1</sup>

I. They are appointed by special rescript of the Consistorial Congregation according to the terms of the Apostolic Constitution *Exui Familia*.

IL (i) With the consent of the local Ordinary, and provided it be for the benefit of the faithful entrusted to them, they are empowered:

to use a portable altar, and to celebrate *sub dio* to celebrate twice or three times on days of obligation, the third Mass to be said (if it can be done *sine gravi incommodo*) in a church in which the other two Masses have not been said, and only if it is really necessary.

(2) To celebrate midnight Mass for the faithful committed to them on Christmas night, and also on the last night of the year, provided, in the latter case, that devotions last about two hours, Mass included; also to celebrate one Mass on Maundy Thursday.

(3) As regards evening Masses they are to observe the terms of *Christus Dominus*.

(4) To bless sacerdotal vestments, corporals, pyxes and other things needed for divine service.

III. For the emigrants:

(1) They can satisfy the precept of Easter Communion at any time of the year.

(2) Having confessed and communicated they can on Aug. 2nd gain a plenary indulgence *toties quoties* by visiting the chapel of the mission where the Blessed Sacrament is reserved and reciting there six times the *Pater, Ave* and *Gloria*.

<sup>1</sup> S.C.C., Dec. io, 1954; A.A.S., XLVII, p. 91.

REFERENCES TO THE CANONS

Opposite the number of the canon is the reference to volume and page

<i>Canon</i>	<i>Canon</i>	<i>Reference</i>	<i>Canon</i>	<i>Reference</i>
	1» 193	53	I, 191	III, 248
		60, 2		IV, 290
				I, 149
14,2			222	i, 149
15	I, 180			i, 149
		I, 186		
		I, 185		I, 149
		i, 179	274, 5	I, 150
		HI, 15°	281	I, 149
		I. 182	283	I, 149
		II 55	284	i, 149
		200	290	I, 149
	I, 175	9°		
	I, 176	108	II, 34	291 I, 149
	I, 193		iv, 267	335 I,150
			IV, 285	
27	I, 173		II, 34	339, 3 III, 107
27, 2		120	II, 35	339, 5 III, 107
29		124	IV, 287	419, 2 III, 108
32		132	IV, 138	445 IV, 308
			IV, 290	4SI HI, 30
33	I, 195		IV, 292	IV, 310
	III, 212		IV, 298	459, 3 I, 180
	i> i90		IV, 300	466, 4 III, 108
		137	IV, 39	467 III 3°
	I, 191	139	HI, 237	470, 2 IV, 49
	1,191	196	I, 180	476 IV, 316
		199> 2		487 IV, 341
		207		



	<i>Canon</i>	<i>Reference</i>	<i>Canon</i>	<i>Reference</i>	<i>Canon</i>	<i>Reference</i>
	488	I, 15°	735	IV, 3	830	III, 184
	»	IV, 343	737	III, 40	835	in, 186
III	488, 7	II, 34	J)	III, 42	836	III, 191
<id	499	IV, 344	738	III, 46	838	III, 192
ttti	501	I, 150	745	III, 49	839	III, 192
r	504, i	I, 181	765	III, 62	840	III, 192
	»	HI, 198	770	III, 65	841	III, 191
HI	518	III, 241	777	III, 67	845	III, 195
	»	III, 329	780	III, 70	846	III, 196
	519	III, 239	782	in, 71	848	III, 196
		III, 240	786	III, 74	851	III, 199
	521	HI, 243	790	in, 76	853	III, 202
	522	III, 243	793	HI, 77	855, 2	I, 343
	523	III, 243	798	HI, 79	856	III, 101
	528	III, 241	801	III, 8,	n	III, 207
	530	IV, 346	802	III, 99	858	III, 216
	539	IV, 352	806	III, 112	859	III, 218
	542	IV, 353	806,2	HI, 113	859, 4	HI, 219
	50β	III, 242	809	HI, 94	861	III, 220
	572	IV, 357	811	in, 171	863	III, 221
	502	II, 369	814	III, 118	868	III, 143
	506	IV, 359	816	in, 133	869	in, 196
	592	IV, 360	817	III, 82	870	III, 235
	597	IV, 367	»	III, 126	871	III, 236
	6i4	II, 35	821	III, 139	873	III, 240
	727	II, 38	822	III, 149	874	III, 240
	729	II, 40!		III, 151	875	III, 239
	73°	II, 39	824, 1	III, 175	»	III, 244
	73b 2	HI, 34	824, 2	III, 180	878	III, 245
	732, 2	III, 25	825, 4	III, 181	880	III, 245

«y | B E\*—|

<i>Canon</i>	<i>Reference</i>	<i>Canon</i>	<i>Reference</i>	<i>Canon</i>	<i>Reference</i>
881	in , 352	935	I, 181	1020	IV, 94 1
882	III, 246	937	IV, I	1032	IV, 202
884	III, 4°9	930	IV, 5	1034	IV, 100
885	HI, 251	940	IV, 7	1035	IV, 54
886	HI, 256	942	IV, 8	55	IV, 102
55	III, 270	945	IV, ii	1036	IV, 102
887	III, 262	948	IV, 13	1038	IV, 74
55	III, 268	949	IV, 138	1043	I, 179
888, 2	III, 273	951	IV, 21	55	IV, 170
889	111,3 16	958	IV, 23	1044	IV, 171
890	III, 328	959	IV, 23	1045	IV, 171
892	III, 330	968	IV, 25	1046	IV, 174
093	III, 333	983	IV, 34	1051	IV, 180
894	HI, 335	986	IV, 36	1058	IV, 106
895	HI, 335	99°, 2	I, 181	1059	IV, 114
896	HI, 335	992	IV, 43	55	IV, 166
897	in , 336	994, 3	IV, 23	1060	IV, 108
900	HI, 339	998	I, 179	1063	IV, n o
901	III, 344	1005	IV, 47	1064	IV, 112
903	in , 352	1012	IV, 53	1065	IV, 113
905	in , 352	55	IV, 65	1067	IV, 118
906	HI, 345	1013	IV, 53	1068	IV, 104
907	in , 346	>5	IV, 62	55	IV, 120
908	III, 392	>5	IV, 68	1069	IV, 129
910	III, 392	1014	IV, 67	1070	I, 159
9it	III, 415	1015	IV, 58	55	IV, 132
912	111,417	1016	IV, 74	1072	IV, 138
913	III, 417	1017	IV, 80	1073	IV, 141
914	III, 418	55	IV, 84	1074	IV, 143
925	III, 428	1019	IV, 92	1075	IV, 145

||E

|—| , ||



(2mm	Reference	Canon	Reference	Canon	Reference
	î IV, ,49		IV, 217	1250	Π. 435
1076		1114			
1077	IV, 158	II 16	IV, 217		I, 162
1078	IV, 162	1118	IV, 221	55	n , 429
1079	IV, 165	1120	IV, 223	1255	II,
1081	( IV, 181	II2I	IV, 225	1256	II, 4
	IV, 183	II28	IV, 228		282
1082	IV, 183	II29	IV, 228	1264	HI, *47
1083	IV, 186		IV, 230	1272	III, 120
1086	IV, 187	1132	IV, 231	1280	II, 6
1087	IV, 188	Ir33	IV, 232		11,5η
1088	IV, 190	34	IV, 233	1282	II, I
1090		35	IV, 233	1283	II, '
1092	IV, 192		IV, 233		
1094	IV, 197		IV, 234	1287	II,
1095	IV, 200	1142	IV, 236	1289	II,
1096	IV, 201	49	1, 290 η.	3°3	III, 100
1097	IV, 203	1161	III, 14g	*3<>3, 2	III, 193
1098	IV, 204	1164	m , i4g	1304	III,
55	IV, 205	1165	HI, 150	τ307, 2	II, 5°
1099	I, *59			1309	II. 55
1100	IV 206	1170	HI, 164		
1102	IV, 207			1312,	II, 55
1103	IV, 208		III, 164	*3*3	II,
1104	IV, 209	1203	IV, 404	*3*5	II,
1108	IV, 211	1229	IV, 407	1348	3, 59
1110	IV, 212	1234	IV, 407	353	IV, 268
	IV, 214	1240	III, 98	1372	n , 77
	IV, 107	1245	I, 178	*374	II, 73
	Π,	53	II, 432	i384	II, 441
	*39	1249		^ 85	II, 442

Canon	Reference	Canon	Reference	Canon	Reference
1395	II, 441	2254	in , 452	2343, *	III, 463
1390	II, 447	2255	III, 457	55	III, 470
1399	ii, 448	2256	IV, in	2343, 4	III, 482
1402	II, 451	2257	in , 458	2345	III, 471
1403	II, 451	2259	I, 160	2347, 3	III, 487
1404	ii, 451	2262	III, 96	2350	III, 483
1405	ii, 452	2265	III, 493	2351	HI, 478
1446	ii, 295	2268	III, 488	2352	III, 487
1473	II, 280	2278	in , 492	n	IV, 26
1495, 2	II, 278	2293	IV, 35	2357	IV. 157
15°2	II, 427	23*4	III, 465	2359	IV, 158
1508	II, 294	2318	11,445	2360	III, 471
ISIS	II, 278	55	II, 440	2363	III, 471
ISIS, 2	II, 371	2318, 2	III, 486	2367	III, 462
1543	II, 370η	2319	III, 481	2368, 2	III, 487
1654	III, 461	55	IV, 112	55	IV, 393
2186	HI, 494	2320	III, 463	2369	III, 329
2195	III, 440	2322	III, 487	55	III, 463
2199	HI, 441	2326	II> 5	2371	II, 4°
2209	HI, 443	55	III, 482	2374	IV, 31
2219, 3	I, 172	2327	III, 473	2375	IV, III
2220	III, 437	2332	III, 468	2385	III, 484
2227	in , 438	2333	III, 468	2388	III, 478
2229	HI, 445	2334	III, 469	55	III, 485
2237	i, 179	2335	III, 473	2392	III, 479
2241	HI, 435	2336	IV, 393	2405	HI, 479
2242	HI, 435	2338	HI, 475		
2245	III, 447	2339	in , 486		
2248	III, 449	2341	HI, 475		
2254	III, 410	2342	HI, 476		

" x

TO THE FOUR VOLUMES

Roman numerals refer to volume ; Arabic numbers to page.

r ,  
Ht .

111

Abduction, ii, 241 ; as impediment

Abortion, ii, 166 ; iii, 483 ; forbidden,  
ii, 168 ; penalty for, ii, 169.

*Absolutio complicitis*, iii, 407.

Absolution of accomplice, iii, 462.

Absolution, sacramental, conditional,  
iii, 255 ; deferred, iii, 277 ; form  
of, iii, 251 ; in doubt, iii, 275, 277 ;  
manner of, iii, 253 ; of heretics and  
schismatics, iii, 258 ; of the dying,  
iii, 257 ; schismatic, i, 282.

Abstinence, days of, ii, 436 ; dis-  
pensation from, ii, 437 ; law of,  
ii, 435 ; persons excused from, ii,  
437 ; subjects of, ii, 435 ; violation  
of, ii, 437.

*Abusus Sacramenti Pernitentia*, iii, 394.

Accession, title to ownership, ii, 289.

Accomplice, revelation of, iii, 381.

Accusation, false, of a confessor, iii,  
471.

Acolyte, iv, 14.

Acts, human, constituents of, i, 12 ;

external, malice of, i, 128 ; free, i,  
12 ; freedom of, i, 12 ; good, bad,  
indifferent, i, 38 ; indifferent, i,  
39 ; meritorious, i, 47 ; moral,

determinants of, i, 53 ; morality  
of, i, 38 ; morally bad, i, 34 ;  
morally good, i, 34 ; moral,  
motive of, i, 57 ; moral, object of,  
i, 55 ; obstacles to, i, 16 ; specific,  
i, 11 ; supernatural, i, 46 ; super-  
natural, conditions of, i, 46 ; volun-

Adjuration, ii 48.

Administration of Sacraments, con-  
ditions for awful, iii, 21 ; lawful,  
iii, 21 ; to heretics and schis-  
matics, iii 34, 258 ; to occult

sinners, iii, 35 ; to public sinners,  
iii, 35 ; to the unworthy, iii, 33 ;  
valid, iii, 16.

Admonition, obligation of, i, 330.

Adoration, external, ii, 3 ; internal,  
u, 3.

Adulteration of goods, i, 347.

Adultery, ii, 238.

Advertence, actual, i, 216 ; confused,  
i, 216 ; insufficient, i, 217 ; virtual,  
i, 216.

Advocate, duties of, iv, 396.

Affinity, an impediment to marriage,  
iv, 158.

Age, an impediment to marriage, iv,  
118.

Agent and principal, ii, 394.

All Souls' Day Masses, iii, 113.

Alms, amount of, i, 323 ; refusal to  
give, i, 326 ; use of others' pro-  
perty for, i, 326.

Almsgiving, definition of, i, 332 ;  
obligation of, i, 323.

Alphonsus, St., on intention, i, 45.

Altar, fixed, iii, 153 ; loss of consecra-  
tion of, iii, 153 ; of celebration, iii,  
153 ; of reservation, iii, 159 ;  
portable, iii, 151 ; privileged, iii,

Ambition, i, 237.

Amendment, purpose of, iii, 365 ;  
efficacious, iii, 366 ; firm, iii, 365 ;  
for venial sins, iii, 367 ; universal,  
iii, 366.

Anger, definition of, i, 242 ; remedies  
for, i, 243 ; results of, i, 242.

Animals, cruelty to, ii, 258 ; meaning  
of, relatively to abstinence, ii, 436 ;  
property in, ii, 288.

*Anlepindium*, iii, 167.

*Antimensium*, iii, 152.

Apostasy, i, 291 ; iii, 465 ; from  
religion, iii, 484.

Appeal to General Council, iii, 468.



- Appetites, sensitive, i, 21.
- Architect, of non-Catholic churches, i, 286.
- Artificial fecundation, iv, 129, 411.
- Ascetic Theology, i, 2.
- Attention in administering Sacraments, iii, 20; internal, iii, 21.
- Auction, ii, 382.
- Automatic writing, ii, 16.
- Avarice, definition of, i, 238; results of, i, 239.
- Aversion from God, i, 300.
- Bankrupt, absolute discharge of, ii, 352; debts of, ii, 352.
- Banns, marriage after, iv, 98; publication of, iv, 94.
- Baptism, the Sacrament of, iii, 39; and Holy Communion, iii, 55; by parents, iii, 47; conditional, iii, 60; effects of, iii, 40; essential for other Sacraments, iii, 39; extraordinary minister of, iii, 46; form of, iii, 44; heretical, i, 283; in danger of death, iii, 59; in necessity, iii, 47; in proper rite, iii, 58; in the Catholic Church, iv, 132; matter of, iii, 42; methods of, i, 59; name in, iii, 60; nature of, iii, 39; necessary, iii, 40; non-Catholic, iii, 482; of abandoned infants, iii, 51; of blood, iii, 40; of converts, iii, 52, 68; of desire, iii, 39; of dying adults, iii, 53; of miscarriages, iii, 50; of monsters, iii, 51; of non-Catholic children, iii, 52; of the insane, iii, 55; of the Spirit, iii, 40; ordinary minister of, iii, 46; place of, iii, 66; private, iii, 59; proof of, iii, 67; proximate matter of, iii, 43; record of, iii, 67; rites and ceremonies of, iii, 57; solemn, iii, 57; spiritual relationship, iii, 64; sponsors in, iii, 62; subject of, iii, 49; water of, iii, 42.
- Barristers, i, 350; iv, 396.
- Bathing, mixed, i, 337.
- Bazaars, non-Catholic, i, 290.
- Bell, iii, 169.
- Benedict XIV, Pope, *Vix Pervenit*, ii, 370.
- Benevolence, i, 315.
- Bestiality, ii, 247.
- Betrothal, iv, 80; age for, iv, 81; conditional, iv, 83; definition of, iv, 80; dissolution of, iv, 85; effects of, iv, 84; error in, iv, 83; juridical form of, iv, 82; obligation of, iv, 84; persons excluded from, iv, 81; with an impediment, iv, 81.
- Betrothed, instruction to the, iv, 99.
- Betting, ii, 403.
- Bination, iii, 113.
- Birth control, iv, 248, 400.
- Blasphemy, ii, 42; habit of, ii, 43.
- Blessing houses of schismatics, i, 289.
- Blockade, ii, 150.
- Bodily members, property in, ii, 262.
- Bona derelicta, vacantia*, ii, 285.
- Bond of marriage, impediment of, iv, 129.
- Books and papers, evil, i, 343; forbidden, ii, 246.
- Bread, eucharistic, kinds of, iii, 121.
- Bribing of tax collectors, ii, 340.
- Brief, papal, i, 156.
- Bull, papal, i, 156.
- Burial, ecclesiastical, iv, 403; illegitimate, iii, 486; unbaptized infants, iv, 409.
- Buying and selling, ii, 377.
- Caesarean section, ii, 18.
- Calendar for Mass, iii, 146; for divine office, iv, 296.
- Calumny, ii, 417.
- Cambium*, ii, 387.
- Cancer of the cervix, and fetus, ii, 191.
- Candles, blessed, for Mass, iii, 168; given to heretics, i, 290.
- Canon law, i, 2.
- Canons of the Code, references to, iv, 412.
- Capital and Labour, rivalry between, ii, 83.
- Capital punishment, ii, 151.
- Cards, altar, iii, 169.
- Cases, reserved, absolution from, iii, 497; episcopal, iii, 335; list of, iii, 496; papal, iii, 335.
- Castration, ii, 160.
- Casuistry, i, 2.
- Catharinus, and external intention,

INDEX

	Celebration of marriage, iv, 197 ; delegation for, iv, 201 ; form of, iv, 197 ; lawful assistance at, iv, 201 ; place of, iv, 212 ; time of, iv, 212 ; valid assistance at, iv, 198 ; without assistant priest, iv, 198.	Children, custody of, iv, 231 ; duties of, Ü, 69 ; education of, ii, 72 ; First Communion of, iii, 203.
	Celibacy of clerics, iv, 290.	Christmas Day Masses, iii, 112.
	Censorship of books, ii, 441 ; books to be censored, ii, 442 ; force of, ii, 444 ; form of, ii, 444 ; present legislation, ii, 442 ; previous legislation, ii, 441 ; reason for, ii, 441.	Church, legislation against the, iii, 46g ; precepts of the, ii, 427 ; property rights of the, ii, 277.
HU		Church, defined, iii, 149 ; desecration of a, iii, 164 ; reconciliation of a, iii, 164 ; violation of a, iii, 164.
mi;		Ciborium, iii, 162.
		Citizens, duties to State, ii, 88.
		Civil marriage, iv, 237.
Hi i	Censures, <i>a jure</i> , iii, 436 ; <i>ab homine</i> , iii, 436 ; absolution from, in danger of death, iii, 450 ; <i>in foro interno</i> , iii, 449 ; in general, iii, 449 ; in ignorance, iii, 447 ; in normal cases, iii, 451 ; in urgent need, iii, 452 ; and Cardinals, iii, 438 ; and Religious, iii, 439 ; and strangers, iii, 439 ; author of, iii, 437 ; contumacy in, iii, 435, 440 ; definition of, iii, 435 ; excusing causes, iii, 445 ; <i>ferendx sententix</i> , iii, 436 ; illegitimate absolution from, iii, 475 ; kinds of, iii, 436, 457 ; <i>sententiee</i> , iii, 436 ; not reserved, iii, 486 ; recourse in, iii, 453 ; reservation of, iii, 334, 447 ; reserved to Holy See, most specially, iii, 462, simply, iii, 473, specially, iii, 465 ; reserved to Ordinary, iii, 481 ; subject of, iii, 438 ; suspension for absolving illegitimately, iii, 481.	Clemency, i, 268.
		Clerical state, iv, 267 ; examination for, iv, 272 ; holiness of, iv, 282 ; vocation to, iv, 268.
		Clerics, and Civil law, i, 161 ; celibacy of, iv, 290 ; in general, iv, 267 ; life in common of, iv, 292 ; oath of, iv, 272 ; obedience of, iv, 288 ; occupations forbidden to, iv, 300 ; privileges of, iv, 285 ; property rights of, ii, 280 ; recital of divine office by, iv, 292 ; rights of, iv, 285 ; studies of, iv, 288.
		Code of Canon law, i, 157.
		<i>Codex Juris Canonici</i> , i, 156.
		Codicil, ii, 368.
		Co-education, ii, 75, 105.
		Cohabitation of the married, discontinuance of, iv, 228 ; resumption of, iv, 230.
		Commandments, precepts of, the first, ii, 2 ; the second, ii, 42 ; the third, ii, 59 ; the fourth, ii, 69 ; the fifth, ii, 141 ; the sixth and ninth, ii, 200 ; the seventh and tenth, ii, 255 ; the eighth, ii, 410.
		Commissions, pontifical, i, 155.
		<i>Commodatum</i> , ii, 384.
		Common error, iii, 249.
		Common opinion, i, 4.
		Communication with excommunicates, iii, 475.
		Communion, Holy, abnormal reception of, iii, 233 ; administration of, iii, 199, 229 ; and deacon, iii, 197 ; and divine precept, iii, 217 ; and lay minister, iii, 198 ; and minor cleric, iii, 198 ; and parish priest, iii, 196 ; disposition of body for,
	Ceremonies, observance of, iii, 24.	
	Chalice, for Mass, iii, 165 ; sale of, ü, 39.	
	Character, servant's, ii, 82.	
	Charity, acts of, i, 308 ; definition of, i, 304 ; efficacy of, i, 309 ; external, i, 323 ; motive of, i, 307 ; nature of, i, 304 ; object of, i, 307 ; obligation of actual, i, 310 ; order of, i, 319 ; sin3 against, i, 312 ; to neighbour, i, 314 ; to self, i, 312.	
	Chastity, i, 241 ; ii, 200 ; external sine against, ii, 218 ; internal sins against, ii, 218 ; moral education in, ii, 202 ; physical aids to, ii, 202 ; religious education in, 11, 202.	



- iii, 211 ; disposition of soul for, iii, 207 ; extraordinary minister of, ii\*» I97 » food and drink after, iii, 233; frequent, iii, 221 ; in hospitals, iii, 234 ; ministered to self, iii, 198 ; moment of reception of, iii, 232 ; obligation to receive, iii, 217; of the sick, iii, 196, 215 ; ordinary minister of, iii, 195 ; paschal, iii, 218 ; place of, iii, 231 ; subject of, iii, 202 ; time for, iii, 230; under both kinds, iii, 199; under species of wine, iii, 199.
- Communism, ii, 112, 459.
- Compensation, occult, ii, 311.
- Compensationism, principle of, i, 113 ; criticism of, i, 114.
- Complacency, sinful, i, 233.
- Concélébration, iii, 99.
- Concupiscence, antecedent, i, 22 ; consequent, i, 22 ; definition of, i, 20 ; progression in, i, 25.
- Confession, annual, iii, 345 ; before Mass, iii, 101 ; certificate of, iii, 328 ; complete, iii, 371 ; doubtful matter of, iii, 349 ; ecclesiastical precept of, iii, 345 ; free matter of, jü, 347 ; general, iii, 386 ; generic, iü» 35° i heard by non-ordained, iii, 467 ; in danger of death, iii, 345 ; integrity of, iii, 371, 378 ; invalid, iii, 383 ; necessary matter of, iii, 347 ; obligation of, iii, 344 ; obligation of hearing, iii, 33°» 332 ; of children, iii, 346 ; of circumstances, “i, 374 ; of converts, iii, 350 ; of doubtful sins, iii, 377 ; of effect of act, iii, 376 ; of external act, iii, 375 ; of male Religious, iii, 240 ; of men, iii, 393 ; of mortal sins, iii, 344, 372 ; of number, iii, 373 ; of nuns, iii, 242 ; of sins forgiven, iii, 348 ; of specific sins, iii, 347 ; of women, iii» 393 J omissions in, iii, 382 ; oral, iii, 370 ; place for, iii, 392 ; qualities of, iii, 369 ; remote matter of, iii, 347 ; repetition of, iii, 383 ; repugnance to, iii, 210 ; sacrilegious, iii, 346 ; seal of, iii, 316 ; secret, iii, 370 ; through interpreter, iii, 352 ; time for hearing, iii, 392 ; to confessor of another rite, iii, 352 ; truthful, iii, 369.
- Confessional, iii, 392.
- Confessor, as judge, 111,271 ; as physician, iii, 271 ; as spiritual father, iii, 270 ; correction of errors by, iii, 280 ; correction of wrong advice, iii, 282 ; duties of, iii, 270 ; obligation to absolve, iii, 275 ; obligation to dispose penitent, iii, 278 ; prudent questioning, iii, 273 ; suggesting remedies, iii, 279 ; understanding of cases, iii, 284.
- Confirmation, the Sacrament of, iii, 70 ; ceremonies of, iii, 76 ; duties of minister, iii, 72 ; effects of, iii, 70 ; extraordinary minister of, iii, 72 ; form of, iii, 70 ; matter of, iii, 70 ; necessity of, iii, 74 ; necessity of sponsors in, iii, 77 ; ordinary minister of, iii, 72 ; place of, iii, 76 ; record and proof of, iii, 79 ; sponsors in, iii, 77 ; sponsorship, valid and lawful, iii, 77 ; subject of, iii, 74 ; time of, iii, 76; valid and lawful, iii, 74.
- Congregation of Religious, and ordination, iv, 50.
- Congregations, Roman, i, 151 ; Religious, iv, 341.
- Conjugal fidelity, iv, 71.
- Consanguinity, an impediment to marriage, iv, 149.
- Conscience, antecedent, i, 65 ; certain, i, 69 ; co consequent, i, 66 ; definition of, i, 64 ; doubting, i, 69 ; false, i, 67 ; kinds of, i, 65 ; lax, i, 77 ; perplexed, i, 72 ; probable, i, 78 ; reflex principles, i, 70 ; scrupulous, i, 73 ; strict, i, 66 ; true, i, 67.
- Consecration, in Mass, double, iii, 82 ; outside Mass, iii, 82 ; repeated, iii, 83 ; single, iii, 82.
- Consent in marriage, iv, 181 ; conditional, iv, 191 ; expression of, iv, 190 ; obstacles to, iv, 182 ; qualities of, iv, 181.
- Constitutions, Apostolic, i, 155.
- Contagious diseases, ii, 199.
- Contention, i, 353.
- Continence, ii, 203.

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»H- ĩ

:

M :

a

• i?

- Contraception, iv, 248.
- Contraceptives, manufacture of, i, 345.
- Contracts, capacity to make, ii, 357 ; consent in, ii, 358 ; consideration in, ii, 361 ; definition of, ii, 353 ; duress in, ii, 360 ; effects of, ii, 362 ; fraud in, ii, 359 ; kinds of, ii, 353 ; misrepresentation in, ii, 359 ; mistake in, ii, 359 ; object of, ii, 355 ; particular, ii, 365 ; termination of, ii, 363 ; undue influence in, ii, 360 ; unenforceable, ii, 356 ; void, ü, 355 J voidable, ii, 355.
- Contributions to non-Catholic churches, i, 287 ; homes, i, 289 ; hospitals, i, 287 ; schools, i, 287.
- Contrition, iii, 353 ; for venial sins, iii, 361 ; imperfect, iii, 355 ; in relation to confession, iii, 361 ; 357 ; supernatural, iii, 359 ; supreme, iii, 359 ; true, iii, 358 ; universal, iii, 360, 363.
- Contumely, ii, 421.
- Convalidation, of invalid marriage, iv, 112 ; retrospective, iv, 234.
- Conversation, immodest, ii, 226.
- sent, ii, 343 ; by defending ill done, ii, 343 ; by participation, 343 ; examples of, i, 343 ; formal, i, 341 ; immediate, i, 341 ; in injustice, ii, 340 ; kinds of, i, 341 ; mediate, i, 341 ; negative, ii, 344 ; positive, ii, 341 ; proximate, i, 341 ; remote, i, 342 ; with heretics, i, 282 ; with surgeons, i, 347.
- Copia confessorii*, iii, 209.
- Copyright, ii, 270 ; Act of, ii, 270 ; infringement of, ii, 271.
- Corners in monopoly, ii, 391.
- Counsels of perfection, i, 133, 197.
- Covetousness, definition of, i, 238 ; malice of, i, 238.
- Craniotomy, ii, 168.
- Cremation, iv, 408.
- Crime, an impediment to marriage, iv, 145.
- Crucifix for Mass, iii, 168.
- Cruets for Mass, iii, 169.
- Curate, iv, 316 ; appointment of, iv 316 ; obligations of, iv, 317. ' ' ,
- Curetting, ii, 195,
- Curios, price of, ii, 377,
- Custom, definition of, i, jg2 ; in ecclesiastical law, i, ig2. \*
- Damage, coalescence of, ii, 307.
- Dancing, i, 337.
- Days of obligation, ii, 59.
- Dean, iv, 308 ; duties of, iv, 308.
- Debts, payment of doubtful, ii, 304.
- Decalogue, content of, ii, 1 ; obligation of, ii, 1 ; origin of, ii, 1.
- Defects, disclosure before marriage of hidden, iv, 86.
- Defendants, duties of, iv, 393.
- De la Taille, Fr., S.J., theory on Mass stipends, iii, 177.
- Delinquency, attempted, frustrated, iii, 444 i co-operation in, iii, 443 ; imputability of, iii, 441 ; meaning of, iii, 435 ; nature of, iii, 440.
- Denunciation, method of, i, 330 ; obligation of, i, 329.
- Deposit, ii, 386.
- Desire, conditional, i, 230 ; of another's misfortune, i, 231 ; of life, i, 300 ; sinful, i, 230.
- Despair, definition of, i, 300 ; remedies against, i, 302.
- Detraction and calumny, ii, 417.
- Devil, invocation of, ii, 16.
- Devotion, effect of, ii, 2 ; meaning of,
- Diaconate, iv, 15.
- Difference of religion, an impediment to marriage, iv, 108.
- Differences, ii, 406.
- Diligence, i, 252.
- Dimissorial letters, iv, 22.
- Discord, i, 353.
- Dislike of qualities, i, 317.
- Disparity of worship, an impediment
- Dispensation, by confessor, i, 181 ; by parish priest, i, 180 ; by religious Superiors, i, 181 ; cessation of, i, 183 ; conditions for, i, 182 ; episcopal, i, 178 ; from law, i, 177 ; interpretation of, i, 183 ; in



- the New Law, i, 134 ; invalid matrimonial, iv, 116; papal, i, 177 ; subjects of, i, 177.
- Dispensation from matrimonial impediments, iv, 168 ; definition of, iv, 168 ; by assistant priest, iv, 173 ; by confessor, iv, 172 ; by parish priest, iv, 171 ; episcopal, iv» 169 › errors in petition for, iv, 179 ; granting of, iv, 179 ; offspring legitimated by, iv, 180 ; papal, iv, 168 ; petition for, »v, 177 ; registration of, iv, 174.
- Disputations with heretics, i, 287.
- Divination, ii, 14.
- Divine office, iv, 292 ; Calendar for, iv, 296 ; manner of recital of, iv, 293 ; obligation of, iv, 292 ; omission of, iv, 295 ; order of recital of, iv, 294 ; prayerful recital of, iv, 296 ; reasons excusing from, iv, 295.
- Divining rod, ii, 15.
- Divorce, iv, 221, 237 ; in English law, iv, 243 ; Pope Pius XI on, iv, 240.
- Doctors, duties of, iv, 398 ; code, iv, 400.
- Documents, papal, i, 155 ; tampering with, iii, 479.
- Domestic servants, ii, 393.
- Domicile, i, 200.
- Doorkeeper, iv, 14.
- Doubt, i, 4.
- Dowser, ii, 15.
- Dress, clerical, iv, 298 ; unbecoming, i, 335.
- Drugging, criminals, i, 247 ; in pregnancy, ii, 193 ; the dying, i, 246,
- Drunkenness, definition of, i, 244 ; remedies for, i, 249 ; results of, i, 248 ; sinfulness of, i, 244.
- Duelling, ii, 146 ; penalty for, iii, 478.
- Dulia*, ii, 4.
- Duress in contract, ii, 360.
- Eclampsia, ii, 1gi.
- Ectopic gestation, conclusions, ii, 181 ; facts, ii, 171 ; medical views on, ii, 183 ; surgical treatment of, ii, 173 ; theological opinion on, ii, 174.
- Ecumenical Movement, i, 287-8, 357.
- Education, Catholic, i, 25 ; declaration of Hierarchy on, ii, 87 ; influence of, i, 32 ; intellectual, ii, 73 ; naturalism in, ii, 98 ; non-Catholic, iii, 481 ; physical, ii, 76 ; Pope Pius XI on, ii, 91 ; spiritual, ii, 72.
- Educational works of the Church, ii,
- Effect, double, principle of, i, 13 ; sacramental, iii, 4.
- Election, papal, abuses in, iii, 464.
- Embalming, ii, 196.
- Embryo, ii, 167; iv, 400.
- Employees, duties of, ii, 80.
- Employers, duties of, ii, 80.
- Employment contract, ii, 392.
- Enclosure, entrance within, iv, 370 ; general principles of, iv, 367 ; of male Religious, iv, 368; of nuns, iv, 368 ; papal, iv, 367 ; permission to leave, iv, 369 ; protection of, iv, 371 ; violation of, iii, 476.
- Encyclical, papal, i, 156.
- Enemy, intercourse with, i, 316 ; love of, i, 316 ; pardon of, i, 316 ; prayer for, i, 317 ; reconciliation with, i, 317.
- Enterprise, public and private, Pope Pius XI on, ii, 106.
- Envy, and sadness, i, 331 ; definition of, i, 249 ; remedies for, i, 250 ; results of, i, 250 ; sinfulness of, i, 250.
- Epieikeia*, i, 187.
- Equiprobabilism, arguments for, i, 85.
- Eucharist, Holy, the Sacrament of the, iii, 81 ; form of, iii, 130 ; instruction on the matter of, iii, 127 ; lawful consecration of, iii, 126 ; matter of, iii, 118 ; valid and lawful matter of, iii, 119 ; valid consecration of, iii, 123.
- Eucharistic fast, iii, 102, 211, 216.
- Euthanasia*, ii, 195; iv, 402.
- Eutrapely, i, 269.
- Evil communications, i, 32.
- Evil counsel, i, 33g.
- Examination of conscience, iii, 389.
- Excardination, iv, 267.
- Excommunication, definition of, iii, 458 ; effects of, iii, 458.
- Excommunications reserved most

ari

·»|  
'»r  
'U

h

specially to the Holy See : absolution of accomplice, iii, 462 ; abuse in papal elections, iii, 464 ; attack on the Pope, iii, 463 ; profanation of the sacred species, iii, 463 ; sacrilegious concubinage iii,, 464 ; violation of the seal of confession, iii, 463; illicit consecration of bishops, iii, 464.

Excommunications reserved specially to the Holy See : apostasy, heresy, schism, iii, 465 ; appeal to General Council, iii, 468 ; attack on Cardinal, etc., iii, 470 ; attacks on the Church, iii, 472; citation of Cardinal, etc., iii, 469 ; fabricating documents, iii, 471 ; false accusation of confessor, 111,471; false teaching, iii, 472; impeding Apostolic letters, iii, 468 ; legislation against the Church, iii, 469 ; plotting against the Church and seizing offices, etc., iii, 472; publication of certain books, iii, 466; simulating Mass or hearing confessions, iii, 467 ; suspicion of heresy, iii, 466 ; trading by clerics, etc., iii, 472; usurping rights of Roman church, iii, 471; cf. below.

Excommunications reserved simply to the Holy See : absolving censures without faculty, iii, 475 ; aggregation to impious sects, iii, 473 ; attempted marriage by or with clerics or Religious, iii, 478 ; citation of bishops, etc., iii, 475 ; communication with excommunicates, iii, 475 ; duelling, iii, 478 ; simony, iii, 479 ; tampering with documents, iii, 479 ; trading, iii, 472 ; traffic in indulgences, iii, 473 ; usurpation of church property, iii, 480 ; violating enclosure, iii, 476.

Excommunications reserved by law to the Ordinary : abortion, iii, 483; apostasy' from Religious Institute, iii, 484 ; attack on cleric or Religious, iii, 482 ; civil marriage by or with Religious, iii, 485 ; making, etc., false relics, iii, 482 ; marriage before a non-Catholic minister, iii, 481 ; non-Catholic baptism, iii,

482 ; non-Catholic education of offspring, iii, 482 ; promise of non-Catholic education of offspring, iii, 481.

Excommunications not reserved : alienation of church property, iii, 487 ; compulsion to enter clerical or religious state, iii, 487 ; failure to denounce solicitation, iii, 487 ; illegitimate Christian burial, iii, 486 ; printing Sacred Scriptures without permission, iii, 486.

Exhibitionism, ii, 248.

Existentialism, ethical, i, 360.

Exorcism, ii, 48.

Exorcist, iv, 14.

Extreme necessity, taking not theft in, ii, 310.

Extreme Unction, the Sacrament of, iv, I ; conditional, iv, 8 ; effects of, iv, i ; form of, iv, 4 ; grace of, iv, I ; lawful administration of, iv, 5 ; matter of, iv, 3 ; minister of, iv, 5 ; necessity of, iv, 10 ; obligation to administer, iv, 5 ; repetition of, iv, 8 ; rites and ceremonies of, iv, 11 ; single unction, iv, 11 ; subject of, iv, 7 ; valid administration of, iv, 5 ; valid reception of, iv, 7.

Fabrication of documents, iii, 471.

Faith, actual, i, 274 ; content of, i, 274 ; definition of, i, 272 ; denial of, i, 281 ; doubts about, i, 292 ; external profession of, i, 279 ; habitual, i, 274 ; motive of, i, 272 ; nature of, i, 272 ; necessity of, i, 275 ; obligation of the act of, i, 278 ; sins against, i, 290 ; temptations against, i, 294.

Fallectomy, ii, 161.

Fast, Eucharistic, iii, 102, 211, 216 ; dispensation from, iii, 102; violation of, iii, 213.

Fasting, causes excusing from, ii, 433 ; days of, ii, 431 ; dispensation from, ii, 432; law of, ii, 429; modification of law, ii, 440; subjects of law of, ii, 432-

Father's legal right in religious education, ii, 77.

Favour of law, iv, 67.



## INDEX

427

- Fear, and law, i, 28 ; and censures, iii, 445 ; definition of, i, 27 ; filial, i, 297 ; obstacle to human act, i, 27 ; reverential, i, 29 ; servile, i, 297.
- Female dress, Instruction on, i, 355.
- Feticide, ii, 166 ; iv, 400.
- Fetishism, ii, 247.
- Fibromyomata*, ii, 190.
- Finder of chattels, ii, 286.
- Flowers, iii, 170.
- Forbidden books, general law, ii, 446 ; publication of, iii, 466 ; reading of, iii, 467 ; retaining, iii, 467.
- Form of a Sacrament, iii, 10.
- Form of marriage celebration, iv, 197 ; subjects of, iv, 206.
- Formed religious house, iv, 343.
- Fornication, ii, 237.
- Fortitude, definition of, i, 264 ; matter of, i, 264 ; motive of, i, 264 ; parts of, i, 265 ; vices opposed to, i, 266.
- Fragments, consecrated, treatment of, iii, 201.
- Fraternal correction, i, 327.
- Fraud in contract, ii, 359.
- Free competition, results of, ii, 107.
- Free will and evil, i, 132.
- Freedom to remarry, iv, 130.
- Frequent Communion, iii, 221 ; decree on, iii, 222 ; Confession, iii, 352.
- Fruits of the Mass, applied, iii, 94 ; general, iii, 94 ; ministerial, iii, 94 ; special, iii, 94.
- Fullness of good and evil, i, 63.
- Furniture, sale of, for heretical churches, i, 350.
- Futures, Options, Differences, ii, 406.
- Gaming, and clerics, iv, 300.
- Gaming and wagering, ii, 403.
- General absolution, iii, 260.
- General Communions, iii, 233.
- Gift, ii, 365.
- Gifts of the Holy Ghost, i, 256.
- Gluttony, definition of, i, 243 ; remedies for, i, 249 ; results of, i, 248 ; sinfulness of, i, 243.
- God the Lawgiver, i, 120.
- Godparents in Baptism, iii, 62 ; lawful, iii, 63 ; necessity of, iii, 62 ; valid, iii, 62.
- Good Friday Mass, iii, 137.
- Goods held for the poor, i, 323.
- Grace, *ex opere operato*, iii, 3 ; first, iii, 4 ; particular, iii, 5 ; reviviscence of, iii, 6 ; sanctifying, iii, 3.
- Gratia, gratis data*, iii, 4 ; *patria*, iii, 4 ; *via*, iii, 4.
- Gravity in theft, ii, 300.
- Habits, evil, i, 31.
- Hatred, i, 331.
- Heresy, 1,291 ; 111,465 ; iii, 466.
- Heretics, and church law, i, 159 ; and matrimonial impediments, i, 159.
- Hire and purchase, ii, 382.
- Historical writing, ii, 426.
- Holy Communion to the unworthy,  $\hat{\text{I}}$ , 343.
- Holy days of obligation, ii, 59.
- Holy Eucharist, cf. Eucharist.
- Holy Orders, the Sacrament of, iv, 13 ; form of, iv, 14 ; major, iv, 13 ; matter of, iv, 14 ; minor, iv, 14.
- Holy Saturday, iii, 138.
- Homosexuality, ii, 248.
- Honour to Saints and relics, ii, 5.
- Hope, definition of, i, 296 ; motive of, i, 296 ; nature of, i, 296 ; necessity of, i, 298 ; object of, i, 296 ; obligation of the act of, i, 299 ; sins against, i, 299.
- Hospital code, a, iv, 400.
- Hospital ships in war, ii, 150.
- Host, Sacred, adoration of the, i, 285.
- Hosts, for Anglican Communion, i, 286 ; for celebrant, iii, 121 ; for the people, iii, 121 ; fragments of, iii, 126, 201 ; renewal of, iii, 120 ; shape of, iii, 120.
- Human nature, criterion of morality,
- Humility, definition of, i, 26g ; vices opposed to, i, 271.
- Hunger strike, ii, 143.
- Hunting, and clerics, iv, 301.
- Husband, authority of, ii, 78 ; maintenance of, ii, 79.
- Hyperdulia*, ii, 4.
- Hyperemesis gravidarum*, ii, 191.
- Hypnotic treatment, ii, 19.
- Hypnotism, ii, 17 ; morality, ii, 18.
- Idolatry, ii, 12.
- Idols, making of, i, 286.

4  
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H

H

Ignorance, affected, i, 18 ; antecedent, i, 18 ; concomitant, i, 18 ; consequent, i, x8 ; crass or supine, i, 17 ; definition of, i, 16 ; effects of, i, 18 ; invincible, i, 17 ; of fact, i, 17 ; of law, i, 18, 123 ; of penalty, i, 16 ; simply vincible, i, 17 ; vincible, i, 17.

Immodest looks, ii, 250 ; touches, ii, 248.

Immodesty, ii, 223 ; as object, ii, 223 ; as motive, ii, 224 ; concomitant danger, ii, 225 ; external, ii, 222.

Impediments, matrimonial, iv, 102 ; abduction, iv, 143 ; affinity, iv, priest, iv, 97 ; bond, iv, 129 ; consanguinity, iv, 149 ; crime, iv, 145 ; difference of religion, iv, 108 ; disparity of worship, iv, 132 ; dispensation from, iv, 168 ; doubtful, iv, 103 ; general principles, iv, 102 ; impotency, iv, 120 ; legal adoption, iv, 1x4, 166 ; legal relationship, tion to reveal, iv, 96 ; prohibitory, iv, 106 ; public propriety, iv, 162 ; religious profession, iv, 141 ; sacred Orders, iv, 138 ; vow, iv, 106 ; vow of celibacy, iv, 107 ; vow of chastity, iv, 107 ; vow of entering religion, iv, 108 ; vow of taking Orders, iv, 108 ; spiritual relationship, iv, 165.

Impediments to reception of Orders, iv, 39 ; dispensation from, iv, 41.

Impotency, an impediment to marriage, iv, 120.

Impurity, ii, 204.

Imputability, i, 13, 17, 20, 22, 27, 31.

Incardination, iv, 267.

Incest, ii, 239.

Inclination, natural, i, 30.

Indulgences, iii, 415 ; abrogation of faculties, iii, 424 ; annexed to dates, iii, 421 ; annexed to objects, iii, 421 ; Apostolic, iii, 418 ; applicable, iii, 416 ; at death, iii, 41g ; confession for, iii, 430 ; definition of, iii, 415 ; gaining of, iii, 428 ;

415 ; jubilee, iii, 431 ; iocai(ux, 416 ; notes on, iii, 432 ; of dunne office, iii, 423 ; of papal blessing, 111, 418 ; of *Quarani' Ore*, ui, 418 ; of Rosaries, iii, 425 ; of scapular medal, iii, 426 ; ofscapulars, iii, 426 ; of Stations of the Cross, iii, 423 ; on AU Souls' Day, üi> 4!0> 427 Î on certain feasts, in, 420 ; partial, iii, 430 ; particular, iii, 418 ; personal, iii, 416 ; plenary, iii, 416 ; prayers prescribed for, iii, 429 ; real, iii, 4x6 ; subject ot, iii, 428 ; *toties quoties*, iii, 421 ; traffic in, iii, 473 ; transference of, iii, 420.

Infamy, iv, 35.

Infants' contracts, ii, 357.

Infidelity, i, 290.

Influence, undue, i\* 27.

Ingratitude, i, 263.

Injustice, gravity of, ii, 297 ; kinds of, H, 295.

Insensibility, i, 271.

Institute, Religious, iv, 343 ; diocesan, iv, 343 Î pontifical, iv, 343.

Insurance, ii, 400 ; Societies, ii, 402.

Intention, actual, i, 14 ; virtual, i, 14.

Intention, sacramental, actual, iii, 17 ; object of, iii, 16 ; of minister

Intentions of the Pope, iii, 429.

Interdict, definition of, iii, 488 ; forbidding entrance into a church, iii, 491 ; local, iii, 488 ; personal, iii,

Investments, and clerics, iv, 304.

Irradiation by X-rays, ii, 195.

Irregularity, iv, 34.

Jephthe's vow, ii, 52 n.

Joy, in another's evil, i, 233 ; in the good effect of sin, i, 233 ; sinful, i, 232.

Judges, i, 349 ; duties of, iv, 389.

Jurisdiction for confessions, cessation of, iii, 238 ; concession of, iii, 244 ; delegated, iii, 239 ; in common error, iii, 249 ; in danger of death, iii, 246 ; in doubt, iii, 248 ; of male Religious, iii, 240 ; of novices, iii, 241 ; of nuns, iii, 242 ; on ship-



- board, iii, 247 ; on aeroplane, iii, 248, n. 1; ordinary, iii, 237; revocation of, iii, 245.
- Jurymen, note on duties of, iv, 392.
- Jus ad rem*, i, 261 ; ii, 259.
- Jus Gentium*, i, 134.
- Jus in re*, i, 261 ; ii, 259.
- Just price, ii, 377.
- Justice, commutative, ii, 257 ; distributive, ii, 257 ; in general, ii, 256 ; kinds of, i, 260 ; legal, ii, 257 ; mean of, ii, 259.
- Killing, conditions to justify, ii, 154 ; indirect, ii, 154 ; in self-defence, ii, 154 ; of the dying, ii, 155 ; of the innocent, ii, 154 ; of the wounded, ii, 155.
- Lahtton, Canon, on vocation, iv, 269.
- Lamp, sanctuary, iii, 162.
- Landlord's obligations, ii, 400.
- Last Blessing, iii, 41g.
- Latria*, ii, 3.
- Law, acceptance of, i, 173 ; affirmative, i, 121 ; causes excusing from, i, 168 ; cessation of, i, 175 ; church, publication of, i, 163 ; Civil, obligation of, i, 144 ; contempt of, i, 164 ; definition of, i, 117 ; dispensation from, i, 177 ; divine positive, i, 132 ; Ecclesiastical, i, 148 ; Eternal, i, 123 ; founded on fiction, i, 122 ; founded on presumption, i, 121, 165 ; fulfilment of, i, 166 ; general aspects of, i, 121 ; gravity of obligation of, i, 164 ; ignorance of, i, 18, 123 ; incapacitating, i, 122 ; inconvenience in fulfilling, i, 170 ; internal acts and, i, 117 ; International, i, 137 ; interpretation of, i, 171 ; just, i, 118 ; kinds of, i, 121 ; moral, i, 121 ; Mosaic, i, 132 ; municipal, i, 142 ; Natural, i, 124 ; negative, i, 121, 164 ; New, i, 133 ; obligation of, i, 164 ; penal, i, 121 ; permanency of, i, 118 ; prohibitory, i, 164 ; promulgation of, i, 163 ; qualities of, i, 117 ; State, obligation of, i, 164 ; subjects of, i, 159 ; voiding, i, 122.
- Lay tribunal, citation of Cardinals before, iii, 469 ; of bishops before, iii, 475.
- Laypeople, duties of certain classes of: advocates, iv, 388 ; defendants, iv, 393 ; doctors and surgeons, iv, 398 ; judges, iv, 389 ; jurymen, iv, 392 ; plaintiffs, iv, 393 ; witnesses, iv, 354 ; general obligations, iv, 387.
- Lector, iv, 14.
- Legacy, ii, 368.
- Legal adoption, an impediment to marriage, iv, 114, 166.
- Legal avocations, and clerics, iv, 302.
- Legal relationship, an impediment to marriage, iv, 114, 166.
- Legislative activities, and clerics, iv, 302.
- Legitimation, iv, 217 ; in English law, iv, 217, 219.
- Leo XIII, Pope, on the priestly life, iv, 310.
- Letters of commendation, iii, 100.
- Letters, opening of, ii, 425 ; piecing fragments of, ii, 426.
- Leucotomy, ii, 198, 460.
- Liberalism, i, 293.
- Liberality, i, 239.
- Lie, evil of, ii, 401 ; kinds of, ii, 412.
- Life, choice of state of, i, 313 ; preservation of, ii, 141 ; sacrifice of, i, 321.
- Lights in cemeteries, iv, 408.
- Loan for consumption, ii, 373 ; for use, ii, 384.
- Lots, casting of, ii, 15.
- Lottery, ii, 404.
- Love, degrees of, i, 305 ; of appreciation, i, 305 ; of intensity, i, 305 ; order of, i, 317.
- Lust, definition of, i, 239 ; remedies for, i, 241 ; results of, i, 241.
- Lynch law, ii, 152.
- Magic, ii, 13.
- Magnanimity, i, 265.
- Man, ultimate end of, i, 7.
- Marine Insurance, ii, 402.
- Market overt, sale in, ii, 287.
- Marriage, the Sacrament of, iv, 53,

П  
urt

r  
nr

h r  
ñ

M

and religious profession  
iv, 141 ; and Sacred Orders, iv,  
138; assistance of non-Catholics  
at, i, 289 ; attempted, iv, 59 ; Author  
of iv» 53 ! before non-Catholic  
minister, iii, 481 ; benefits of, iv,  
69; conditional consent, iv, 191 ;  
canonical, iv, 60 ; clandestine, iv,  
61 ; by proxy, iv, 191 ; consent  
of parents to, iv, 100 ; consent in,  
iv, 181 ; contract of, iv, 54, 65 ;  
validation of invalid, iv, 112 ;  
dissolution of, iv, 221, 238 ; effects  
of, iv, 214 ; freedom for, iv, 92 ;  
impediments to, iv, 102 ; indissolu-  
bility of, iv, 63 ; in general, iv,  
53 » in non-Catholic church, i,  
285, iv, **no** ; invalid, iv, 59 ;  
investigation before, iv, 93 ; juris-  
diction over, iv, 74 ; kinds of, iv,  
58 ; matter and form of, iv, 66 ;  
minister of, iv, 66 ; morganatic, iv,  
61 ; nature of, iv, 53 ; occult, iv,  
60 ; of clerics, iii, 478 ; of con-  
science, iv, 211 ; of minors, iv, 101 ;  
of notorious sinners, iv, 113 ; of  
Religious, iii, 478, 485 ; properties  
of, iv, 62 ; public, iv, 60 ; purpose  
of, iv, 68 ; putative, iv, 59 ; rati-  
fied, iv, 58 ; rectification of invalid,  
iv, 232 ; registration of, iv, 209 ;  
right use of, iv, 244, 247 ; rite and  
blessing, iv, 207 ; subject of, iv, 54 ;  
true and lawful, iv, 59 ; true and  
unlawful, iv, 59 ; unity of, iv, 62 ;  
with apostate, iv, 113 ; without  
dispensation, iv, **in**.

Married life, preparation for, iv, 90.

Married state, iv, 56.

Married women, property rights of,  
Ü» 275.

Martyrdom, i, 266.

Masochism, ii, 247.

Masonic emblems, making of, i, 289,

Mass, additional celebration, iii, 112 ;  
additions and omissions in, iii, 134 ;  
assistant priest, iii, 114 ; Calendar,  
iii, 146 ; celebration, private, iii,  
96 ; celebration, public, iii, 96 ;  
distractions during, iii, 104 ; double  
consecration, iii, 82 ; doubts dur-

ing, iii, x31 ; duration of, iii, 146 ;  
efficacy of, iii, 88 ; for benefice, iii,  
110 ; for excommunicates, iii, 98 ;  
for heretics, iii, 97 ; for pagans, iii,  
97 ; for public sinners, iii, 98 ;  
for schismatics, iii, 97 ; for stipend,  
iii, 109 ; for the people, iii, 105 ; for  
vow, iii, **in** ; for whom offered, iii,  
96 ; fruits of, iii, 94 ; Gregorian,  
iii, 156 ; hour of, iii, 139 ; in  
heretical church, i, 285, iii, 152 ;  
in Holy Week, iii, 136 ; interrup-  
tion of, iii, 142 ; language of, iii, 133 ;  
a memorial, iii, 81 ; minister of, iii,  
99 ; non-fasting, iii, 102 ; obliga-  
tion to celebrate, iii, 104 ; offerers,  
iii, 86 ; offerings, iii, 175 ; of  
unworthy priest, iii, 88 ; on ship-  
board, iii, 152 ; place of, iii, 149 ;  
preparation for, iii, 103 ; promised,  
iii, 111 ; as propitiatory, iii, 89 ;  
requisites for, iii, 165 ; rite, iii,  
133 ; Rubrics of, iii, 133 ; Sacrifice  
of, iii, 81 ; as satisfactory, iii, 89 ;  
server, iii, 115 ; simulation of, iii,  
467 ; stipends, iii, 176 ; thanks-  
giving after, iii, 103 ; tone of voice  
in, iii, 144 ; vestments for, iii, 171.

Mass of precept, ii, 59 ; assistance at,  
ii, 60 ; attention at, ii, 62 ; bodily  
presence at, ii, 60 ; causes excus-  
ing from, ii, 64 ; dispensation from,  
ii, 65 ; in private oratories, ii, 64 ;  
intention to assist at, ii, 60 ; omis-  
sion of parts of, ii, 61 ; on ship-  
board, ii, 63 ; where to be heard,

Masses, bequests for, ii, 373.

Maternity Welfare Clinics, co-opera-  
tion at, i, 351.

Matrimonial impediments, cf. Im-  
pediments.

Matrimonial Causes Act, 1937, \*v,  
243-

Matrimonial laws, subject of, iv, 76.

Matter and form of Sacraments, acci-  
dental changes in, iii, 11 ; sub-  
stantial changes in, iii, 11 ; union  
of, iii, 10.

Matter of a Sacrament, proximate,  
iii, 9 ; remote, iii, 9.

Maundy Thursday Mass, iii, 136.



- Medical practice, and clerics, >v, 3°j.
- Medico-moral problems, ii, 187.
- Meekness, i, 268.
- Mental reservation, ii, 413.
- Merit, intention for, i, 48.
- Meritorious act, conditions for, i, 48.
- Midnight, computation of, iii, 212.
- Military service, and clerics, iv, 304 ; evaded, ii, 307.
- Minister of a Sacrament, iii, 14 ; attention of, iii, 20 ; authorization of, iii, 23 ; instrumental, iii, 14 ; intention of, iii, 16 ; principal, iii, 14 ; state of grace of, iii, 21.
- Ministry, kinds of, iii, 14 ; extraordinary, iii, 14 ; ordinary, iii, 14 ; private, iii, 15 ; public, iii, 15.
- Minors, marriage of, ii, 71 ; iv, 101 ; property rights of, ii, 273.
- Misrepresentation, in contract, ii, 359.
- Missa dialogata*, iii, 117.
- Missal, iii, 169.
- Mistake, in contract, ii, 359.
- Mixed marriage, celebration of, iv, 208 ; dispensation for, iv, 109 ; duty of Catholic party in, iv, no ; forbidden, iv, 108.
- Mixture with consecrated species, iii, 84.
- Modernism, i, 293.
- Modesty, i, 268 ; ii, 200.
- Mohatra*, ii, 376.
- Money-changing, ii, 387.
- Monopoly, ii, 388.
- Monstrance and lunette, iii, 171.
- Month's residence for marriage, iv, 202.
- Moral act, motive of, i, 57 ; nature of, i, 34 ; requisites of, i, 34.
- Moral system, need of some, i, 80.
- Moral Theology, and ethics, i, 1 ; definition of, i, 1 ; juristic, i, 3 ; sources of, i, 6 ; subject of, i, 6.
- Morality, extrinsic, i, 38.
- Morbid conditions, i, 33.
- Mortuary chapel, iii, 151.
- Murder, ii, 141.
- Music, notes on, iii, 146.
- Mutilation, ii, 156 ; iv, 401.
- Mutuum*, ii, 373.
- Mystical Theology, i, 2.
- Narcotherapy, iii, 99.
- Natural law, invariable 127 ; obligation of i, 131 ; precepts of, i, 126 ; sanction of, i, 132 ; subjects of, i, 131.
- Naturalism, in education, ii, 90.
- Necessity, common, i, 319 ; extreme, i, 395 grave, i, 319 ; spiritual, i, 319.
- Necromancy, modern, ii, 27.
- Necrophagy, i, 245.
- Necrophily, ii, 247.
- Neighbour, definition of, i, 314 ; sins against, i, 331.
- Non-Catholic, schools, attendance at, 73 > services, presence at, i, 284.
- Notanda pro confessoriiis, de abusu matrimonii*, iv, 260 ; *de actibus conjugum*, iv, 256 ; *de actu maritali*, iv, 251 ; *de circumstantiis actus conjugalis*, iv, 253 ; *de cooperatione in onanismo*, iv, 262 ; *de debito*, iv, 258 ; *monita Pp. Pii XI*, iv, 266 ; *nota pastorales*, iv, 264.
- Novices, privileges of, iv, 356.
- Noviciate, religious, iv, 353 ; conditions for admission to, iv, 354 ; discontinuance of, iv, 355 ; entrance into, iv, 355 ; obstacles to admission to, iv, 353.
- Nude, objects, ii, 229 ; representation of the, i, 336.
- Nudism, ii, 229.
- Nullity, in English law, iv, 243.
- Nuns, confessions of, iii, 242.
- Nupital Mass, iv, 207.
- Nurses, co-operation of, in hospitals, i, 284.
- Oath, in Law Courts, i, 28g ; ii, 44.
- Oaths, conditions for valid, ii, 45 ; definition of, ii, 44 ; dispensation from, ii, 48 ; fictitious, ii, 46 ; form of, ii, 45 ; in English Court, 45 ; promissory, ii, 47.
- Object of act, actually voluntary, i, 14 ; of the will, i, 12 ; virtually voluntary, i, 14.
- Objects, manufacture of sinful, i, 345 ; sale of indifferent, i, 347 ; sale of sinful, i, 346.

INDEX

«П

ri  
«lt

«l

- Obstacle to human act, i, 16 ; permanent, i, 16 ; transient, i, 16.
- Obstacles, to consent in marriage, iv, 182.
- Occasions of sin, free, iii, 291 ; necessary', iii, 291 ; proximate, iii, 291.
- Occupancy, ii, 283.
- Offence, reparation of, i, 317.
- Offspring, a benefit of marriage, iv, 7°-
- Oils, Baptism, iii, 57 ; Confirmation, iii, 76 ; for Extreme Unction, iv, 3.
- Onanism, constructive, ii, 171 ; cooperation in, i, 348.
- Operations, during pregnancy, ii, 192 ; in hospitals, i, 347.
- Options, ii, 406.
- Order, Religious, iv, 343.
- Orders, cf. Holy Orders.
- Ordination, sacred, age for, iv, 30 ; bishop of, for secular clergy, iv, 21 ; candidates for, iv, 27 ; canonical prescriptions for, iv, 28 ; canonical title for, iv, 31 ; documents necessary for, iv, 43 ; due preparation for, iv, 43 ; duress in, iv, 26 ; examination of candidates for, iv, 21 ; intervals between Orders, iv, 31 ; lawful, iv, 26, 29 ; minister of, iv, 21 ; notification of, iv, 48 ; oath before, iv, 51 ; of Religious, iv, 23 ; ordinary minister of, iv, 21 ; *per taltum*, iv, 31 ; preliminaries to, iv, 43 ; publication of notice of, iv, 44 ; requisite knowledge for, iv, 30 ; rites and ceremonies of, iv, 47 ; spiritual exercises before, iv, 45 ; subject of, iv, 25 ; time and place of, iv, 47 ; valid, iv, 25.
- Organ playing, in non-Catholic churches, i, 286.
- Organic transplantation, ii, 198.
- Ovariotomy, ii, 161.
- Ownership, ii, 260 ; obligations of, ii, 263 ; of bodily members, U, 262 of external things, ii, 262 ; of life, ii, 261 ; of reputation, ii, 268 ; subjects of, ii, 272 ^titles to, ii, 283.
- Pall Bearers, iv, 409.
- Papal Allocution, to Catholic jurists, iv, 392; to Catholic docton, 411.'
- Papers, bad, selling of, i, 344,
- Parents, duties of, ii, 72.
- Parish priest, iv, 310 ; and Viaticum, iii, 198; duties of, iv, 312 ; functions reserved to, iv, 3 u ; removal of, iv, 310 ; stability in office of, iv, 310,
- Partnership, ii, 397.
- Pascal's letters, i, 3.
- Paschal Connunion, iii, 217.
- Passion, definition of, i, 20.
- Passions, classified, i, 21.
- Pastoral notes : act of charity, i, 311 ; acts of theological virtues, i, 50 ; administering the Sacraments, iii, 32 ; betrothal, iv, 87 ; blasphemy, ii, 43 ; children's confessions, ii, 229 ; conditional administration of Sacraments, iii, 13 ; confession, iii, 385 ; Confirmation, iii, 75, 79 i detraction, ii, 419 ; fasting and abstinence, ii, 438 ; forbidden books, ii, 454 ; habitual sinners, i, 218 ; hatred, i, 332 ; Holy Communion, iii, 224 ; hope, i, 302 ; loss of merit, i, 50, 295 ; Mass server, iii, 103 ; mixed marriages, iv, 209 ; morbid sexuality, ii, 233 ; prayer and meditation, ii, 10 ; pure intention, i, 52 ; questioning penitents, ii, 230; restitution, ii, 345 ; retreats and missions, i, 53 ; salvific Will of God, i, 50 ; separation of the married, iv, 228; specific intention, i, 50; sublimity of charity, i, 307 ; Sunday observance, ii, 68 ; truthfulness, ii, 416 ; visiting the sick, iii, 260 ; vows, ii, 58.
- Pastoral Theology, i, 1.
- Pastore, support of, ii, 427.
- Paten, iii, 165.
- Patience, i, 265.
- Pauline privilege, iv, 223.
- Peaceful possession, title to, ii, 379.
- Penance, the Sacrament of, iii, 235 ; conditions for efficacy, iii, 235 ; definition of, iii, 235 ; jurisdiction for, iii, 237 ; minister of, iii, 236 ; valid and fruitful, iii, 363.



- Penance, the sacramental ; acceptance of, iii, 261 ; a punishment, iii, 261 ; commutation of, iii, 266 ; forgotten, iii, 269 ; how to be fulfilled, iii, 268 ; imposition of, iii, 262 ; kinds of, iii, 264 ; obligation to accept, iii, 267 ; obligation to fulfil, iii, 267 ; relation to sins, iii, 263 ; when to be fulfilled, iii, 268.
- Penitent, iii, 344 ; acts of, iii, 353 ; and confessor, mutual presence of, iii, 254.
- Penitents, types of : blind, iii, 296 ; children, iii, 294 ; dull, iii, 296 ; dying, iii, 315 ; habitual sinners, iii, 286 ; in occasions of sin, iii, 290 ; married, iii, 314 ; mentally defective, iii, 297 ; nuns, iii, 308 ; pious, iii, 303 ; priests, iii, 310 ; recidivists, iii, 288 ; scrupulous, iii, 301 ; tempted, iii, 298 ; young, iii, 32.
- Perseverance, i, 266.
- Petty thefts, coalescence of, ii, 305.
- Pity, i, 321.
- Pius XI, Pope, on : co-education, ii, 105 ; divorce, iv, 240 ; education, ii, 91 ; educational works of the Church, ii, 100 ; mixed marriages, iv, 115 ; naturalism in education, ii, 98 ; preparation for married life, iv, 90 ; priesthood, iv, 273, 321 ; property, ii, 262 ; Religious, iv, 341 ; right use of marriage, iv, 266 ; schools, ii, too ; sex-education, ii, 103 ; social order, ii, 106 ; sterilization, ii, 164 ; subjection of wife, iv, 55.
- Placenta prævia*, ii, 187.
- Plaintiffs, duties of, iv, 393.
- Plate, Communion, iii, 116.
- Plays, scenic, i, 337.
- Pleasure, as motive, i, 40 ; in evil, i, 234.
- Plugging during pregnancy, ii, 192.
- Poaching, ii, 288.
- Pollution, ii, 241.
- Polyandry, iv, 62.
- Polygamy, i, 128 ; iv, 62.
- Pope, attack on, iii, 463.
- Possession, ii, 271 ; of another's goods in bad faith, ii, 320 ; in doubtful faith, ii, 322 ; in good faith, ii, 37.
- Postulancy, religious, iv, 352.
- Prayer, by whom to be made, ii, 8 ; characteristics of, ii, 7 ; definition of, ii, 6 ; efficacy of, ii, 9 ; for non-Catholic rulers, i, 289 ; for whom to be made, ii, 9 ; frequency of, ii, 7 ; kinds of, ii, 6 ; necessity of, ii, 6 ; non-Catholic, i, 350 ; object of, ii, 9 ; precept of, ii, 7 ; to whom to be made, ii, 10.
- Precept, i, 196.
- Preference, order of, i, 320.
- Premature delivery, ii, 193.
- Pre-natal life, care of, ii, 76.
- Prescription, ii, 291 ; in Canon Law, ii, 294.
- Presence, Divine, permanence of, in Eucharist, iii, 85.
- Presents, i, 338.
- Press, non-Catholic, i, 344.
- Presumption, i, 301.
- Presumptuousness, i, 237.
- Pride, definition of, i, 236 ; remedies for, i, 238.
- Principal and agent, ii, 394.
- Privilege, cessation of, i, 185 ; definition of, i, 185 ; interpretation of, i, 185 ; renunciation of, i, 186.
- Privileges of Religious, iv, 377.
- Probabiliorism, arguments for, i, 83.
- Probabilism, apparent exceptions to, i, 96 ; basis of, i, 93 ; degrees of opinion in, i, 93 ; extension of, i, 95 ; limitation of, i, 97 ; objections to, i, 105 ; origin of, i, 91 ; principle of, i, 91 ; proofs of, i, 101 ; value of, i, 94.
- Probability, extrinsic, i, 95 ; intrinsic, i, 95.
- Probable opinions in the Sacraments, iii, 27.
- Profession, religious, iv, 357 ; convalidation of, iv, 359 ; effects of, iv, 357 ; validity of, iv, 357.
- Promise, ii, 365.
- Property, alienation of church, iii, 487 ; limitations of, ii, 267 ; right to, ii, 262.
- Prostitution, toleration of, i, 354.
- Prudence, definition of, j, 259 ; poten-

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dal parts of, i, 259 ; sins opposed to, i, 260; subjective parts of, i, 259.  
Psychoanalysis, ii, 20 n.  
Public exhibitions, and clerics, iv, 302.  
Public propriety, an impediment to marriage, iv, 162.  
Pupils, duties of, ii, 87.  
Pusillanimity, i, 301.  
  
Quasi-domicile, i, 201.  
Quasi-parish priests, and Mass for the people, iii, 106.  
  
Rape, ii, 240.  
Rapine, ii, 298.  
Rash judgment, ii, 420.  
Rashdall, H., on Probabilism, i, 79.  
Reading, dangerous, ii, 227.  
Recourse in censures, iii, 453.  
Refusal of Sacraments, iii, 33.  
Registers, parochial, iv, 315.  
Registration of marriages, iv, 209.  
Regulars, religious, iv, 343.  
Relations, duties of, ii, 77.  
Relics, alienation of, ii, 5 ; honour to, ii, 5 ; notable, ii, 5 ; sale of, ii, 5.  
Religion, meaning of, ii, 2 ; sins  
  
Religious, defined, i, 150; iv, 342; dismissal of, iv, 382; dismissed, status of, iv, 385; effects of profession, iv, 373; government of, iv, 345; lay, iv, 343; life, abandonment of, iv, 379; privileges of, iv, 377J profession an impediment to marriage, iv, 341: state of, iv, 341; studies iv, 376; vows, iv, 360.  
Remarriage, iv, 236.  
Repetition of Sacraments, iii, 25.  
Reprisals, ii, 150.  
Reserved sins, iii, 333.  
*Res nullius*, ii, 285.  
Rescripts, i, 190.  
Resistance, to sin, i, 20 ; to temptation, i, 26.  
Restitution, amount of, ii, 345; causes excusing from, ii, 351 ; duty of, i, 263 ; for co-operation, ii, 340 ; for defamation, ii, 332 ; for physical injury, ii, 334 ; for sexual offences, ii, 335 ; for spiritual

harm, ii, 331 ; for unjust damage, ii> 325 › general principles, ii, 314 · grounds of, ii, 316 ; manner of, fi\* 350 ; order of, ii, 349 ; time and place of, ii, 351 ; to the poor, ii, 348 ; to whom due, ii, 346.  
Retreats, spiritual, for priests, iv, 287.  
Revelation, necessity of, i, 130.  
Right, definition of, ii, 256 ; hierarchy of, ii, 257 ; natural, i, 260 ; subject-matter of, ii, 257.  
Ring, worn by cleric, iv, 299.  
Rings, at auction, ii, 383.  
Rites, Chinese, i, 352.  
Rotary Clubs, iv, 307.  
Russian schismatic services, i, 283.  
  
Sacrament, Blessed, reservation of the, iii, 157.  
Sacramental knowledge, use, iii, 326.  
Sacramentals, iii, 8.  
Sacraments, administration of, iii, i6, 21 ; causality of, iii, 2; definition of, iii, i ; external rite, iii, 1 ; grace of, iii, 1; in general, iii, 1; institution of, iii, 1; matter and form of, iii, 9; minister of, iii, 14; necessary, iii, 6; number of, iii, 2; obligation to administer, iii, 30; of the dead, iii, 5; of the living, iii, 5; probable opinions in, iii, 27; repetition of, iii, 25; simulation in, iii, 37; subject of, iii, 39; valid and unfruitful, iii, 6.  
Sacred Heart, adoration of the, ii, 3η.  
Sacred Orders, an impediment to marriage, iv, 138.  
Sacrifice of the Mass, parts of the, iii, 84 ; views on the, iii, 81.  
Sacrilege, concept of, ii, 33 ; definition of, ii, 33 ; local, ii, 35 ; *personal*, ii, 34 ; real, ii, 36.  
Sadness for good done, i, 233.  
Sale of Goods Act, ii, 380.  
*Sanatio in radice*, iv, 234.  
Scandal, active, i, 333 ; diabolical, i, 334 ; direct, i, 334 ; indirect, i, 334 ; kinds of, i, 333 ; of the weak, i, 334 i passive, i, 333 ; pharisaical, i, 333 ; sinfulness of, i, 334.  
Scapular and medal, iii, 426.  
Schism, i, 291, 353 ; iii, 465.  
School, Pope Pius XI, on the, ii, 100.



Scripture, printing of, iii, 486.

Scruples, definition of, i, 73 n ;  
object of, i, 75 ; origin of, i, 74 ;  
rules for, i, 76.

Seal of confession, ifi, 316 ; and  
probabilities, iii, 318 direct vio-  
lation of, iii, 317, 323 ; examples of  
violation of, iii, 325 ; indirect vio-  
lation of, iii, 318, 324 ; nature of,  
ii\*» 318 j object of, iii, 317, 321 ;  
obligation of, iii, 316 ; penalties  
for violation of, iii, 32g · subject  
bound by, iii, 319.

Secrets, ii, 422.

Sects, impious, aggregation to, iii,  
473.

Secular Institutes of Perfection, iv,  
307.

Segregation of defectives, ii, 159, 165.

Seminary, clerical, iv, 27 ; mixed, iv, 28.

Separation of the married, permanent,  
iv, 228 ; temporary, iv, 230.

*Sequestrum*, ii, 387.

Servants, at non-Catholic services, i,  
283 ; co-operation of, i, 348.

Servile work, definition of, ii, 66 ;  
excuses for, ii, 67 ; kinds forbidden,  
ii, 66 ; sinfulness of, ii, 67.

Servitudes, ii, 260.

Sex-education, Pope Pius XI on, ii,  
103 ; Pope Pius XII and Bishops  
of England and Wales on, ii, 456.

Sexual pleasure, principles, ii, 205.

Shipboard, confessions on, iii, 247.

Shock therapy, ii, 198.

Sick calls, iii, 331.

Sick, Communion of the, iii, 216.

Simony, absence of, ii, 38 ; acts of,  
ii, 39 J against divine law, ii, 37 ;  
against Ecclesiastical law, ii, 38 ;  
definition of, ii, 37 ; effects of, ii,  
40 ; penalties for, ii, 40 ; restitu-  
tion for, ii, 41 ; sinfulness of, ii, 38.

Sin, actual, i, 203 ; advertence a  
necessary condition for mortal, i,  
216 ; against the Holy Ghost, i,  
215 ; concept of, i, 203 ; conditions  
for mortal, i, 213 ; consent to, i,  
217 ; confused advertence and, i,  
216 ; crying to heaven for ven-  
geance, i, 214 ; deadly, i, 236 ;

definition of, i, 203 ; deformity of,  
i, 204 ; distinction of mortal from  
venial, i, 209 ; effects of mortal, i,  
211 ; external, contrary to nature,  
ii, 241 ; external, not contrary to  
nature, ii, 237 ; formal, i, 204 ;  
grave becomes light, i, 223 ;  
habitual, i, 203 ; inequality of sins,  
i, 207 ; internal, i, 229 ; kinds of, i,  
203 ; light becomes grave, i, 224 ;  
material, i, 204 ; mortal, i, 204 ;  
occasion of, given to another,!, 339 ;  
original, i, 203 ; personal, i, 203 ;  
philosophical, i, 208 ; pre-nuptial,  
i, 219 ; relative gravity of, i, 213 ; re-  
served to the Pope, iii, 335 ; serious  
matter of, i, 213 ; signs of imperfect  
consent to, i, 218 ; signs of insuffi-  
cient advertence to, i, 217 ; slight  
matter in, i, 223 ; species of, i, 220.

Sins, distinction of external, i, 228 ;  
distinction of internal, i, 227 ;  
numerical distinction of, i, 226 ;  
specific distinction of, i, 220 ;  
venial, coalescence of, i, 225.

Sisters, Religious, iv, 343.

Skull-cap, iii, 173.

Slavery, ii, 269.

Sloth, i, 250.

Social order, Pope Pius XI on the  
State and, ii, 106.

Socialism, Pope Pius XI on, ii, **in**.

Societies, condemned, i, 338.

Sodomy, ii, 246.

Solemn vow, an impediment to mar-  
riage, iv, 138.

Solicitation, failure to denounce, iii,  
407.

*Sollicitatio*, iii, 394.

Species, sacred, accidents to, iii, 200 ;  
corruption of, iii, 86 ; profanation,  
of, iii, 463.

Spiritual Healing, morality of, ii, 23.

Spiritual relationship, an impediment  
to marriage, iv, 165.

Spiritualism, condemned, ii, 27 ;  
definition of, ii, 25 ; method of, ii,  
25 ; modern, ii, 26.

Sponsors, in heretical baptism, i, 283.

Sponsorship, in Baptism, iii, 62 ; in  
Confirmation, iii, 77.

Stakeholder, ii, 387.

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J\*

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H  
«I

Standard of action, i, 35.  
State, and education, ii, 07. 95 ;  
    authority over citizens, ü, 88 ;  
    power over marriages of the un-  
    baptized, iv, 78.  
Sterility, iv, 400.  
Sterilization, contraceptive, ii, 194;  
    eugenic, ii, 157 ; methods of, ii, 156 ;  
    of criminals, ii, 160 ; of defectives,  
    ii, 161 ; Pope Pius XI on, ii, 164 ;  
    punitive, ii, 160; therapeutic, ii,  
    157 ; views on, ii, 163; iv, 401.  
Stipend Masses, acceptance of, iii,  
    176 ; *ad instar manuali'am*, iii, 181,  
    and privileged altar, iii, 188 ;  
    canonical prescriptions, iii, 182 ;  
    determination of, iii, 184 ; diocesan  
    standard, iii, 184 ; extrinsic title to,  
    iii, 177 ; funded, iii, 181 ; kind of  
    Mass, iii, xgo ; kinds of, iii, 181 ;  
    manual, iii, 181 ; obligations, 111  
    111  
    194; personal celebration of, 1U,  
    190 ; place of celebration of, U1,  
    188 ; prohibitions concerning, ÜI  
    180 ; register of, iii, 194 ; time  
    ibi  
    brating, iii, 185 ; trading in, iii,  
    182 ; transmission of, iii, 191.  
Stomach pump, iii 214, 234.  
Strangers, and church law, i, 161 ;  
    and Lenten abstinence, i, 162.  
    ii, 86 ; morality of, ii, 84 ; simple,  
    ii, 84 ; ss-mpathetic, ii, 85.  
Studiousness, i, 269.  
Subdeacon, iv, 14.  
Suckling infants, ii, 76.  
Suggestion, waking, ii, 19.  
Suicide, ii, 142.  
Sunbathing, i, 337.  
Superfluous income, ii, 267.  
Superiors, higher, iv, 344.  
Supernatural act, conditions for the,

Surety, and clerics, iv, 300.  
Surgeons, duties of, iv, 398.  
Suspension, iii, 492.

Tabernacle, iii, x6o.  
Taking not theft, ii, 310.  
Tampax, ii, 254.

Taverns, and clerics, iv, 301.  
Taxes, evasion of, ii, 338.  
Teacher, duties of, ii, 86.  
Temperance, i, 249.  
Tempting God, ii, 31.  
Tenant's obligations, ii, 398.  
Theft, absolute standard, ii, 302 ;  
    coalescence of, ii, 305 ; definition of,  
    ii, 298 ; gravity of, ii, 300 ; rela-  
    tive standard, ii, 301.  
Thomas Aquinas, St., doctrine on  
    pleasure, i, 44.  
Time, computation of, i, 195.  
Tonsure, iv, 14 ; of clerics, iv, 298.  
Topectomy, ii, 198.  
Trade marks, ii, 388.  
Tradesmen's injustice, ii, 348.  
Treasure trove, ii, 285.  
Treasury of the Church, iii, 95.  
Trespass, ii, 289.  
Trial by ordeal, ii, 32.  
Tribunals, Roman, i, 153.  
Trusts, Uses, Charitable purposes, ii,  
    372-  
Truthfulness, ii, 410.  
Truths necessary for salvation, i, 276.  
Twilight sleep, ii, 193.

Uberrimae fidei contracts, ii, 402.  
Undue influence in contracts, ii, 360.  
Usury, ii, 375.  
*Ut Debita*, iii, 187.

Vagi, and church law, i, 161.  
Vain-glory, i, 237.  
Vain observance, ii, 13.  
Validity of Sacraments, doubt of, iii,  
    13.  
Vasectomy, ii, 156, 161.  
Venereal pleasure, complete and in-  
    directly voluntary, ii, 213 ; com-  
    plete and voluntary, ii, 205 ; duty  
    of resisting, ii, 216 ; incomplete, ii,  
    216 ; incomplete and voluntary, ii,  
    207 ; sinfulness of, ii, 205.  
Vestments, Mass, iii, 171 ; colour of,  
    iii, 172 ; form of, iii, 173.  
Viaticum, and parish priest, iii, 198 ;  
    and religious Superior, iii, 198 ;  
    obligation of receiving, iii, 227.

Vices, the capital, i, 236.  
Violence, definition of, i, 19 ; in  
    external acts, i, 19 ; in internal



- acts, i, 19 ; moral, j, 20 ; obstacle to human act, i, 16.
- Virtue, ethical concept of, i, 253; infused, acquired, i, 256 ; intellectual, i, 254 ; moral, i, 254; natural, i, 253 ; supcn.atural, i, 253 ; the mean of, i, 257 ; theological, i, 257, 272.
- Vocation, religious, iv, 346 ; Fathers of the Church on, iv, 347 ; modern views on, iv, 349 ; note on, iv, 351; of boys, iii, 306 ; of girls, iii, 307 ; special and general, iv, 346 ; theologians on, iv, 347.
- Vocation to clerical state, iv, 268 ; initial, iv, 268 ; internal, iv, 268 ; necessity of, iv, 268 ; Pope Pius XI on, iv, 273 ; want of, iv, 270.
- Voluntary, *in se, in causa*, i, 12.
- Voting, duty of, ii, 90.
- Vow, cessation of, ii, 55 ; commutation of, ii, 57 ; definition of, ii, 49 ; delay in fulfilling, ii, 54 ; disjunctive, ii, 54 ; dispensation from, i, 129, ii, 56 ; effects of solemn, iv, 3575 fictitious, ii, 51 ; impediment to marriage, iv, 106, 167 ; incidence of, >54» intention in, ii, 51 ; invalid, ii, 51 ; kinds of, ii, 50 ; matter of, ii, 52 ; obligation of, ii, 53 ; obligation of religious, iv, 360 ; of chastity, iv, 364 ; of obedience, iv, 365 ; of poverty, iv, 360 ; subjects of, ii, 50.
- Wage, the just, ii, 81.
- War, conditions of just, ii, 148 ; conduct of, ii, 149 ; definition, ii, 148 ; permissible, ii, 148.
- Water, for Baptism, iii, 58.
- Wealth, superfluous, i, 325.
- Wife, duties of, ii, 79 ; subjection to husband, iv, 55.
- Wig, and clerics, iii, 173.
- Will, last, ii, 366 ; capacity to make, ii, 369 ; capacity to witness, ii, 369 ; notes on, ii, 370.
- Wine, drops of, in chalice, iii, 125 ; for Mass, iii, 122.
- Witnesses, duties of, iv, 394.
- Women servants in presbyteries, iv, 291.
- Work, obligation of, i, 314.
- Worship, absolute, ii, 4 ; public, ii, 4 ; relative, ii, 4.